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Notes
of
An Exile
to
Van Dieman's Land

By Linus W. Miller

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NOTES OF AN EXILE

TO

VAN DIEMAN'S LAND:

COMPRISING INCIDENTS OF THE CANADIAN REBELLION IN 1838, TRIAL OF THE AUTHOR IN CANADA, AND SUBSEQUENT APPEARANCE BEFORE HER MAJESTY'S COURT OF QUEEN'S BENCH, IN LONDON, IMPRISONMENT IN ENGLAND, AND TRANSPORTATION TO VAN DIEMAN'S LAND.

ALSO,

AN ACCOUNT OF THE HORRIBLE SUFFERINGS ENDURED BY NINETY POLITICAL PRISONERS DURING A RESIDENCE OF SIX YEARS IN THAT LAND OF BRITISH SLAVERY, TOGETHER WITH SKETCHES OF THE ISLAND, ITS HISTORY, PRODUCTIONS, INHABITANTS, &c. &c.

Slaves can breathe in England.

BY LINUS W. MILLER.

FREDONIA, N. Y.
PRINTED BY W. MCKINSTREY & CO

1846.

Entered according to Act of Congress, in the year 1846,

By LINUS W. MILLER,

In the Clerk's Office of the Northern District of New-York.

TO

HON. WILLIAM H. SEWARD,

THE FRIEND OF LIBERTY AND THE PHILANTHROPIST,

THESE UNPRETENDING PAGES ARE INSCRIBED,

(BY PERMISSION,)

WITH FEELINGS OF PROFOUND RESPECT,

BY

HIS HUMBLE AND GRATEFUL SERVANT,

L. W. MILLER.

PREFACE.

A history of the wrongs and sufferings of the Canadian State Prisoners, is a subject in which the Public have felt so deep an interest, that no apology can be necessary for the appearance of this work in that respect; but the relation of some of the author's own adventures, although intimately connected with the foregoing, may possibly be viewed in a different light; and he feels it due to himself to say that they were introduced in accordance with the suggestions of numerous friends, with greater diffidence than their prominence might seem to indicate. In giving these slight sketches of the Canadian rebellion, he has been actuated by a desire to correct some false impressions current with the American Public in regard to the feelings and character of the Canadians in their late unhappy struggle for independence.

The proceedings in the courts of London should, perhaps, have been placed in the appendix, but it is hoped the lengthy arguments of the opposing counsel will not be regarded as altogether uninteresting and valueless, by the intelligent reader.

In quoting the language of others, it has been necessary, in order to give a correct idea of the character of many in authority in the British dominions, and the abuse endured by the prisoners, their mental sufferings, &c., to introduce that which is objectionable; yet it has been done with the greatest reluctance, and in as guarded a manner as practicable.

Some typographical errors occur in the work, which might have been avoided, had it been convenient for the author personally to correct and revise the proof sheets ; but they are, in general, of such a nature as to be readily detected and understood by the intelligent reader.

The author feels free to acknowledge, that the work is, in many respects, imperfect ; but trusts that it has one redeeming feature at least ; the facts which are related are neither colored or exaggerated.

STOCKTON, N. Y., Oct. 10, 1846.

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NOTES

ON

CANADA, ENGLAND AND VAN DIEMAN'S LAND.

CHAPTER I.

Tour through Canada. — Popular Feeling. — American Sympathy. — The Author joins the Canadians.

AFTER all that has been written and said, concerning the late rebellion of the Canadas, it would be superfluous to attempt giving a history of the eventful period of 1837-8; or of the causes which led to the outbreak. Justice to the Canadians, and those of my countrymen who have participated in their struggles, requires, however, the statement of a few facts relative to the important question of justification, on the part of the revolutionists.

Previous to joining my fate with theirs, in the unfortunate affair, I made a tour, early in the spring of '38, through the most populous districts of the Upper Province, to satisfy myself on this point. It will be recollected that the first outbreak had proved a failure; that Navy Island had been abandoned; and that the battle at Point-au-Pelee, between a large British force and a handful of brave Patriots, had ended in a dear victory to the former. The natural tendency of these events was, to discourage the liberal party in Canada; and the inconveniences to which they had been subjected, through these trying times, would, had the causes of the outbreak been as light and trivial as its enemies assert, have

sickened them of the unequal contest, and effectually crushed the spirit of rebellion. Such, however, was far from being the case. A large majority of the most respectable Canadians whom I visited, on learning my business and motives, discovered their sentiments upon the dangerous subject with much frankness; sat down with me at their own firesides, and told me of the wrongs and injuries of Canada; of the events which had changed good loyal subjects of the crown into enemies; alienated their hearts from the so long worshipped mother country, and caused them to regard their homes in this western world as no longer the abode of peace and plenty, quietude and happiness, and sacred justice. The blight and mildew of misrule had repeatedly passed over the land. Year after year British aggressions upon their rights, and indifference to their wrongs and oft-repeated remonstrances against grievances, had increased until all hopes of redress had passed away. In their distress they had turned their eyes to these United States; studied our glorious and peaceful institutions, until they imbibed the spirit of the heroes of the American Revolution, and felt the God-like divinity of liberty stirring within their souls, and rousing their slumbering energies to action. They remembered that Heaven had raised up help in that dark period to our struggling forefathers, and took courage. Feeling their cause to be equally just and righteous, they boldly crossed the Rubicon, confiding in the God of battles, nor doubting that stout hands and brave hearts from this home of liberty would join with theirs in purchasing, if necessary, the blessings of free government. Mismanagement and indiscretion in their leaders had led to repeated defeats; driven many thousands of their most effective men into exile in the United States; thrown many hundreds into prison, and desolated the land. The menials of the British government were every where in power, and individuals suspected of favoring the revolutionists were subject to every indignity and abuse which the ingenuity of their enemies could devise. Houses and barns were burned, hearths desecrated, property wantonly destroyed, and females insulted, and sometimes violated with impunity. The heads of venerable sires, white with the

snows of age, were covered with wounds, inflicted by the cudgels of the Tories. I was universally assured that a large majority of the most respectable Canadians, were more anxious than ever for independence, and that the situation of the country alone prevented their effective organization;—paid spies of the enemy being among them few were willing to trust their neighbors where there was so strong a temptation and such facilities for treachery. But the universal cry was, "Come over and help us. A majority of our fighting men have fled from the country and are now in the States. If the United States government have not forgotten the struggles which gave their nation existence, those refugees will be permitted, if they choose, to embody and return to their homes with arms in their hands; and if American citizens prize the institutions of their own country, and wish to see them extended to their suffering neighbors, they will be willing to join in the righteous cause. When sufficient numbers come over to give some hope of success, we are ready to support them with our property and our lives. If there are any La Fayette, Kosciuskos, and De Kalbs among your countrymen, let them come to our aid; and, whether we prosper or not, they will at least be rewarded with our gratitude." Such were the words of the Canadians—such their situation in the spring of 1838.

On the American side, and along the northern frontier, intense excitement prevailed. Extensive preparations were being made for the invasion of Canada, by the refugees and American citizens combined. The former had fled to our shores for safety, protection and succor. The latter had opened their doors to them, listened to the tale of their wrongs and sufferings, and made their cause their own. Tens of thousands of the most-respectable citizens of the northern States cheerfully and zealously gave their influence to the cause, and, directly or indirectly, encouraged the enterprise.

Reader! the author has no apology, nor does he wish any, beyond these simple facts, for joining in the Canadian rebellion. Let those of our citizens who prize not our own glorious institutions,—who have forgotten that they were purchased

in part by the blood of foreigners, — who have no compassion for the woes of others, and never read the holy precept which commands that we should do unto others as we would they should do unto us, — who are **TORIES** in heart and would sell their country for a smile from British aristocracy, — who are **COWARDS** and dare not fight, either for themselves or others, lift up their hands in righteous horror and holy indignation at the depravity of heart which led a youth of twenty years of age to join his fate with the oppressed Canadians!

CHAPTER II.

Execution of Political Offenders. — Attempt to rescue seven men under Sentence of Death. — The Prince of Traitors. — Canadian Patriotism. — British Officer. — A Narrow Escape.

THERE are reasons existing which forbid the relation of many interesting incidents of the Canadian rebellion. One adventure, however, it is right the world should know, as it will justly expose a man whose name will necessarily appear in subsequent chapters of these notes. For the sake of his relatives, some of whom I know to be respectable and estimable, I would willingly lean to the side of mercy, and cover the deeds of the renegade with the veil of oblivion; but justice will not admit of either silence or palliation.

On Friday, the 13th April, 1838, Samuel Lount and Peter Matthews were executed. The deep excitement which their martyrdom created throughout the Canadas caused many a Tory heart to tremble for fear of retributive justice. Those of my readers who were conversant with those trying times, will not have forgotten, that the wives of the doomed men, supported by the petitions and prayers for mercy of tens of thousands of British subjects, implored upon their knees of the Lieutenant Governor, the boon of life for the partners of their bosoms; that he, while they clung to his knees, and plead with all the power of woman's fervent love and hallowed devotion, coldly spurned them from his feet, and that after the

enactment of the disgraceful tragedy, they were again spurned from the same humble position, while begging for the mangled and lifeless remains of those they so dearly loved. Oh! the deep and holy affection of a wife; to supplicate with bended knee, kissing the feet of the tyrant, washing them with her tears, for the mangled clay of the loved one. Oh! the coldness, the hardness, the barrenness, the utter desolation of feeling, the entire prostration of every ennobling quality, which nerved this representative of Queen Victoria, to spurn one of her sex from his feet, with *such a prayer!*

This want of all humanity on the part of the chief executive, gave reason to fear that seven men lying under sentence of death at Hamilton, would share the same fate.*

On Saturday, the 14th April, the C. R. R. Association, composed of Canadian refugees, and under whose instructions I had been acting for some time, called a meeting at Lockport, for the purpose of devising means for saving these men. After sitting with closed doors for some time, I was summoned into their presence and informed by the President that the Association had selected me to perform the perilous and important duty of rescuing the doomed men from death. Awful as such a responsibility was, my feelings on accepting the proposal from the venerable and excellent President, were unbounded joy, at the opportunity of risking my own life to save these devoted men, and not a little pride, that such an enterprise was entrusted to me.

*The "Hamilton Express," of the 7th ultimo, contained the following:

"WEDNESDAY, April 4th.

"This day the court assembled to give judgment on the prisoners. His Lordship addressed them on the enormity of their crime, and the awful situation in which they stood.

SENTENCES.

"William Webb and John Hammill—sentence of death recorded, with an assurance that their case would be represented to the executive, not to enforce the sentence.

"Horatio Hills, Stephen Smith, Charles Walworth, Ephraim Cook, John Tufford, Nathan Town, and Peter Malcolm,—DEATH!

"The court said that in consequence of the protection Peter Malcolm afforded to the Rev. Mr. Evans, his case would be favorably represented to the executive.

"The prisoners were ordered for execution on Friday, the 20th April, instant.

"Hills and Smith wept bitterly; the other prisoners received their sentences with firmness, but seemed to feel like men who knew their dreadful situation.

"The court was then dissolved."

Dr. Wilson, a member of the association, and a brave man as Canada can boast of, accompanied me; after being commended by our friends to the care and protection of Almighty God, we took the rail-road cars for Niagara Falls, where we arrived early in the evening. The planning and execution of the enterprise was left to myself. I purposed to cross into Canada that evening, raise 200 efficient men, proceed in secret to Hamilton, and on Thursday evening, at the hour of twelve, the Doctor with a piquet was to attack Dundurn Castle as a ruse;—another small party were to take possession of a steamboat, which always lay at the wharf during the evening, and by the aid of an engineer of our own, to prepare her for the reception of the main body, with which I was to surprise the jail, force the doors, &c., and press the prisoners on board; there to be joined by the Doctor and all hands, to whistle Yankee Doodle until we landed our valuable freight on Yankee ground;—a capital plan, kind reader, had it been accomplished.

At the Falls, the Doctor informed me that an acquaintance of his at that place, a Canadian refugee, and relative of one of the doomed men, might be made a valuable auxiliary, as he knew him to be a brave, trustworthy fellow. I desired an introduction, and in five minutes time, a tall, stout built, dark complexioned man was announced by my friend as "Mr. Jacob Beemer."

There was something in his eye which at first made me distrustful, but this unfavorable impression was removed, when in reply to my questions he informed me that his own uncle was one of the doomed men, and burst into tears. On being informed of my business, he seized my hand, and, imploring the richest of Heaven's blessings on my head, entreated permission to join the enterprise. As he was a proscribed man in Canada, I pointed out the danger that he would incur, but he assured me he could disguise himself, go to his native town, raise fifty men and meet me near Hamilton at the time appointed.

He was very urgent to learn my plans, but as I had determined to have no other confidant than the Doctor, to avoid

the possibility of treachery, I reasoned with him on the impropriety of his request; but he fell to crying again, and urged that as his own uncle was one of the prisoners I ought not to distrust him,—that he wished to say to his neighbors that he understood and approved of the plan, as an inducement for them to enlist, &c., &c. Believing human nature incapable of treachery under such circumstances, I gave him the desired particulars. He listened with the deepest interest, approved of all, and promised faithfully to commence his journey the next morning, and act his part with promptitude and discretion. Thus we parted; the Doctor and myself traveling all night, crossing Grand Island on our way, and arriving in Canada early the next morning.

It has been erroneously asserted that the Canadians are so unfeeling and selfish that sooner than do a noble deed, at the risk of property or life, they would cling to their hearthstones and see their nearest friends sacrificed. From close observation and experience, I know the reverse to be the case. A more generous, self-sacrificing people never lived. With the same opportunities and encouragements which our forefathers enjoyed in 1776, I doubt not they would have proved themselves in every respect their equals. Their love of liberty and independence, was a deep and fixed principle, which fortune, in the unfortunate struggle, compelled them to confine within their own breasts, and its influences to their own private and hallowed firesides. It was there that the pent up flame would burst forth; there with closed doors the robust son would draw from its place of concealment the polished musket, and, as far as practicable, accustom himself to its use, while the fond parents exhorted him to deeds of valor—parental love bowing to that of country, and enabling them to dedicate their heart's pride, and the hope of their old age, to the cause nearest their hearts. It was there, when the family knelt around the altar, and their humble orisons were breathed forth to the Almighty Ruler of the Universe for his fatherly care and protection, that the low, but fervent and oft agonizing petition might be heard, for the King of Kings and Lord of Lords, to stretch forth

His almighty arm for the salvation of Canada; for His grace and mercy to those of their countrymen in prison and exile; and success to the efforts being made for the establishment of free institutions. Reader, scenes like these inspired me with confidence, and made me an enthusiast in their cause. To a superficial observer traveling through Canada, there was little in outward appearances to tell the deceptive tale. I once met an American in company with two or three Canadians, whom I knew to be devoted to our cause, and in the constant habit of beseeching Almighty God to bless and prosper it. The following dialogue, as near as I can recollect, took place:

Stranger.—“Gentlemen, you appear to be men of respectability and candor: I wish to satisfy myself upon some matters of dispute in the States, with regard to the wishes of the Canadians, in general, for a change of government. Will you have the kindness to oblige me with your own views upon the subject?”

My friends looked at each other, and then at the stranger for a moment, when one, with but little apparent hesitation, said, in reply,—

“We can have no objections to answering your reasonable questions. I can speak for myself and neighbors. We are contented. We prefer our own institutions to those of the United States, and are ready and willing to defend them with our lives. We have no fellowship with those given to change.”

The American gentleman politely thanked them—said he thought wrong impressions had gone abroad, which he should henceforth use his influence to correct, and rode on his way.

Expressing surprise at what I had witnessed, they laughingly replied,—“What, did you think us such fools as to open our hearts to a stranger, in such times as these? He might have been an emissary of the government, and in less than 24 hours, we, with our neighbors, been thrown into jail, to pine for months without a hearing of any kind. Instances of this kind are not uncommon. It is true, he might be an honest man, but then, how many honest hearts

are indiscreet. A dozen words which he had heard from our lips, told without any evil intention to some of the Tories, would most likely have produced the same result. But let him show himself, with only a thousand men, on this side of the line, a number barely sufficient to give us some hopes of success, and we will fight our way through the ranks of the enemy to join him; and so will three fourths of Canada. We are no cowards; we want liberty, and are willing to fight for it; but experience has taught us prudence. You Americans judge us harshly; you say, 'if the Canadians want a change of government, why do they not turn out and fight like men, as our forefathers of '76 did? This would be some proof, and we, as Americans, should have an excuse, as well as confidence, to help them.' But compare our situation with that of the thirteen American colonies in '76, and you will find less reason to condemn us. You were far more numerous than we are, although the proportion of your Tories, was greater than ours. You had an immense territory to fight and organize upon; when defeated in one colony you could retreat to another, and there collect your scattering forces and again unfurl your banner. The British could only maintain their authority and supremacy at a few important points, in the vicinity of which the Tories exerted the same evil influences that they do here; and the revolutionists were as glad as we are to remain quiet. Our territory is so limited that the British forces, combined with the Tories, awe us all at one time. We are so narrowly watched that a man cannot stir from his own door without exciting suspicion, or trust his best friend with the secrets of his heart, lest indiscretion should betray him. An informer can reside in a neighborhood without being suspected, and by simply going to a magistrate and making oath that he suspects certain parties of treasonable practices, cause them to be thrown into prison, without further ceremony, where they must lie, until the habeas corpus comes in force."

On my arrival in Canada, I found the inhabitants under the influence of intense excitement, occasioned by the past and pending executions; and when I made known my business,

all were anxious to join in the enterprise. Had the nature of the case required it, thousands, instead of hundreds, were ready to risk their lives to save the doomed men. The murderous sacrifice of the lamented Lount and Matthews had so wrought upon their minds as to render them regardless of consequences.

Leaving Dr. W. to select the necessary number of men from the host of anxious volunteers, and force his way under cover of night and the bush to Hamilton, I rode forward to make the necessary arrangements. My friends carrying me from one town to another, and only stopping to exchange horses and their riders, I got neither sleep or rest for four days and nights, except at the intervals of exchange, which seldom exceeded twenty minutes. For forty-eight hours it rained or snowed incessantly, in consequence of which my overclothes were frequently covered with ice an inch thick, yet I never heard a word of complaint from my guides, nor saw a man who did not, on learning my business, bid me God speed, and with very few exceptions, ask permission to join the party. Old men seemed to forget their age and families, and young men their sweet-hearts.

One noble-hearted Canadian youth, living near the Short Hills, of most respectable connections, Mr. John W. Brown, accompanied me for a few miles on Tuesday evening. Pleased with his zeal and gallant bearing, I promised him that he should share in the enterprise if he liked; at which he was greatly overjoyed, and cut many a wild freak with his horse, jumping him over stumps and fences, to show his dexterity and horsemanship; often, the while, muttering to himself, "They shan't be hung, by G—d! Death!—what if I am killed? who would not die in such a cause?" Those of my readers who have read the beautiful and affecting story of LEFEVRE, will pardon me for introducing the above sentence. I have known the young man since for a long time, and never heard him utter another oath, or make use of an improper word. At the exchange of horses, I had scarcely bid him adieu, ere I heard a faint groan, evidently proceeding from my friend. Upon inquiring if he was hurt,

he replied that the horse had merely given him a slight kick; and entreated me not to stop on his account, as every moment's delay was of importance. I afterwards learned that his leg was broken, and fear of causing me any delay, prevented him from acknowledging the truth. Such was a Canadian youth.

On Wednesday evening, I found myself in the vicinity of Hamilton, and nearly worn out with fatigue. In the morning I called upon a man by the name of Jorden, a schoolmaster by profession, who professed to be a staunch Rebel, and desired him to go in the evening, and guide a party of men from a certain point in the bush, to the place of rendezvous. After parting from him, I altered my dress, wig, &c., and felt myself secure in entering Hamilton. This precaution, as the sequel will show, proved to my advantage. I was not a little surprised to find the town full of soldiers, and the militia hastily pouring in from the surrounding country. Hastening to my friends who were greatly alarmed at seeing me in the midst of my enemies, I was informed that I had been betrayed. Information had been given to government that 2000 men were coming to rescue the prisoners; with all the details of my plans. Every thing was correct, except the cipher added to the 200. They informed me that Dundern Castle, the steamboat, entrance to the harbor, jail and surrounding buildings, were all strongly guarded by militia and British regulars; (a goodly number of the latter being necessary to secure the obedience of the former;) that the government were greatly alarmed, and had, upon receipt of the information, instantly granted a respite to the prisoners, and caused news to be circulated in great haste throughout the country that there would be no more executions for political offences. And, in short, they greatly feared the vengeance of the whole country. Messengers were immediately despatched to intercept my men, with news of the safety of the prisoners, and orders for them to return in secrecy to their homes, which was done; and the authorities, after much investigation, came to the conclusion that there had been no rising. As for my trusty guide, Jorden, he went

near enough to the party to see them in the bush, hastened to town and made oath to the fact; but the magistrates, having been before imposed upon with false information, detained him in custody, while they sent spies to reconnoitre. In the mean time, the men had returned as ordered, and the treacherous Jorden, in spite of oaths and protestations of innocence, was committed to jail, to take his trial for perjury, and eventually received a sentence of three months imprisonment.

Putting up at the hotel generally frequented by the British officers, I enjoyed an agreeable chat at the dinner table with several epaulet gents, who threatened utter extermination to the Rebels, who were expected to attack the town that night; and after each had proved himself equal in strength and prowess to a host of Yankees, the conversation turned more particularly upon the leader of the party, whom they described as a tall, ferocious-looking Yankee. "I hear," said a young lieutenant, "that he disguises himself with false wigs, whiskers, &c., but I defy the devil to cheat me; let me see him but for an instant, and I'll detect him I warrant ye.—I should like to get hold of the fellow," said he, addressing me; "we would hang him without judge or jury." "Ah yes," responded several kindred spirits, "we would burn him alive for his presumption in daring to trust himself this side of the line."

"These Yankees are strange fellows," I replied, and rose to leave the table.

"Gentlemen," said an elderly officer, who had hitherto listened with evident disgust to the conversation, "you talk bravely when there is no danger, but, place you face to face with this same Yankee, as you term him, and may be you would brag less. I was at the battle of Lundy's Lane in the last war, and I assure you, we British did not feel like boasting during the action, although we have learned to do so, since there is no longer danger of a fair fight."

This was a bold speech to men already inflated with wine, and, before he had done, I observed several young officers lay their hands upon their sword hilts; but the offending party

merely smiled a glance at me, and added, "Do you, young gentlemen, understand the sword exercise? I have practiced much in my time, and hold myself a match for half a dozen raw hands." This speech set the young fellows to playing with their military buttons. I replied, that my profession made it unnecessary for me to learn fencing, except as an accomplishment. The veteran then rose and left the room without ceremony, but I noticed a sarcastic smile upon his honest, open countenance.

As he passed out, he beckoned to me to follow; and when alone, thus addressed me,—

"My friend, I perceive from your manners and address, that you are an American."

I felt my false whiskers actually twitching my cheeks, and the hair of my wig standing on end; but maintained my composure and thrust my hand carelessly into my pocket, where lay a trusty pistol, which, somehow, seemed to cock itself when my fingers came in contact with it, with an audible "*Click*."

Whether my new acquaintance heard the sound or not, I cannot say; at any rate he took no notice of it, but continued:

"I thought, my friend, that I might serve you by a hint; you will be liable to abuse if those hot-headed young gents suspect your nationality, and I should be very sorry to have any of your countrymen insulted here. Should there be any thing worth noticing, he added, I dare say you carry pistols, and know their use?" Here I could scarce refrain from drawing one forth and demanding silence from his officious tongue; but I waited with impatience to hear "what next?"

"In such a case—that is, you understand me—a case that requires a friend, I shall be happy to act in that capacity.—I have a brace of as good duelling pistols, should yours not answer the purpose, as ever winged an impertinent greenhorn; they will be at your service, as well as myself; and now, here is my card. I trust there will be no occasion for you to trouble the owner for the purpose we have men-

tioned, but you must give me the pleasure of your company over a bottle of old Madeira, this evening. I have always liked your countrymen since they fought so nobly in the last war. Nationality? pshaw! nationality, sir, is nothing; a genuine British officer is a gentleman, and all real British officers like, as well as I do, brave, honorable people, no matter what nation they belong to; in peace they are friends, and if in the hour of battle they must be enemies, why," said he, a smile lighting up his fine countenance, "it they fight as well as you Americans, the moment fighting is over, they are friends again. I knew a little occurrence to the point, happen in the last war. I was out with a small scouting party, and unexpectedly fell in with about an equal number of Americans.

Both parties fired simultaneously, but from the haste and surprise of the moment, without doing any damage beyond that of making a button-hole or two in some of our coats.— But while reloading for another discharge, I observed a haversack among the Americans, which appeared to contain provisions, and had myself fired at a fellow picking a bone of some kind. Now, I was deuced hungry, and so were my men, but we had nothing except three flasks of good old whiskey, wherewith to satisfy the cravings of appetite; consequently, I, for one, and I think I may safely include my companions without belieing them, felt more like eating than fighting. The moment our pieces were loaded, and your countrymen had already brought theirs to the 'present,' I sung out,—'Hold! friends, a parley.' 'A parley it is,' said the American ensign who commanded. 'Men, ground your arms, but stand ready for action.' I seized our whiskey flasks and holding them up, said, 'we have three flasks of whiskey; what have you in that haversack of yours?' 'Roast fowls, brown bread and cheese,' was the reply. 'What say you to sharing it with us, my good fellows? We are hungry, and after we have had a lunch, and all got a sip of our whiskey, why, we can fight all the better if necessary.' A loud laugh was the first answer from both parties; a short consultation followed among the Americans, when

they all stacked their arms against a tree, and I ordered my men to do the same. The whiskey flasks and haversack made us good friends for an hour, and when we came to the last flask we arrived at the sage conclusion, that it was of no use for friends to fight; so both parties pledged each other in a parting glass, not only not to fight, but to keep the secret, and I have kept it on my part till now; but I know there is no impropriety in telling it to an American; and, d'ye see," said he, offering me his hand, "it makes us acquaintances and friends."

I thanked him for his story, and kindness in offering his services; assured him that I should pocket no insult from the jackanapes in the adjoining room, and should feel great pleasure in accepting his kind offers in case of need. This elicited another warm shake from his hand, with the remark, "I like a gentleman who understands such matters,—don't disappoint me to-night." I assured him I took too much pleasure in his society to allow trifles to prevent me from doing myself the honor; and we parted. Bitterly did I regret the circumstances which afterwards happened, that rendered it impossible for me to keep the appointment; for I promised myself a rich treat in his agreeable conversation. An open hearted, liberal minded man, I always adored. What a contrast was there between this gentleman, and the young officers. Experience had taught the one all the essentials of the gentleman and soldier, without hardening his heart or prejudicing his mind against his fellow creatures; while the want of experience, and, it may be, of good principles, had made the others impertinent, proud and vain. Pope says truly,—

Pride, where wit fails, steps in to our defence,
And fills up all the mighty void of sense.

Leaving the hotel, I repaired to the store of the Messrs. Mills, brothers, one of whom was at Lockport as a refugee. About 3 o'clock, P. M., Sir Allan McNab, Commander of the forces, Colonel Lang, Judge Jones, the magistrates of the town, and a large number of other gentlemen, came into the store, and, without ceremony, commenced scrutinizing

my person. Not a word was spoken, but all gazed eagerly upon my countenance, as if expecting there to read the information they were in quest of. Guessing the purport of their visit, I assumed a careless indifference, and inquired of Mr. Mills, if what I saw before me was a fair specimen of Hamilton breeding and etiquet; but he gave me no answer. The British nabobs continued to stare at me for about 20 minutes, without speaking, except in low whispers to each other, intended, doubtless for my ear, to see if they could awaken my fears to a betrayal of guilt; such as, "It is him; there can be no mistake from the description,"—"He can't escape us," &c., &c.—after which, as if satisfied, they retired as they came, leaving two policemen to guard the door. Turning so Mr. M. I said, "If you are ready, Sir, I will close my business with you." "Certainly," said he, "step into the counting room." This room was at the opposite end of the store. He followed me, closing the door of the room after him. In five minutes I had altered my disguise—passed through a trap door into the cellar, and from thence into a back street. Before, however, I had got twenty rods from the store, upon looking round, I saw a company of soldiers surrounding it, and the whole posse of my late visitors entering the door. Casting occasionally "a longing, lingering look behind," I hastened out of town, and in half an hour joined my good friend Dr. Wilson. We both laughed heartily at my narrow escape from our enemies, who, as I afterwards learned from Mr. Mills, were greatly incensed at my good fortune, and busied themselves in searching the town and country for several days, to catch the "tall Yankee sympathiser," as they called me.

We closeted ourselves until twelve o'clock that night, when we repaired to the ground where our party were to have met and mustered; secreting ourselves so as to see the whole field. At the precise moment fixed upon, several companies of infantry and cavalry marched into the field; proving that the traitor had told all that he knew, and that traitor was JACOB BEEMER! No other person had known aught of the details, of our enterprise. I afterwards learned

that the miscreant, instead of doing as he promised, crossed the ferry at the Falls, the next morning, and made oath to the facts before a magistrate; and, in order to magnify his services, had sworn that 2000, instead of 200 men were to attempt the rescue; thus committing the double crime of treachery and perjury—treachery to his own uncle and six others who were under sentence of death, and 200 men who were risking their lives to save those men from the gallows! And what was the price of his treachery? what was the reward of so hellish an act? Simply this, reader: to be allowed by the Canadian authorities to return unmolested to his home in Canada, from which he had fled like a coward! He was safe in the United States, his property in Canada small, and he could have sent for his family, and obtained an honest livelihood on the American side until the rebellion was over; but, rather than submit to this trifling inconvenience, he did a deed, compared with which Arnold's treachery was a virtue. Such was the *Prince of Traitors*, JACOB BEEMER.

CHAPTER III.

Gen. McLeod. — Anecdotes. — The Short Hills party. — Crossing the Niagara. — Camp of the Rebels. — Attack on the Enemy. — The Prisoners. — Murder prevented. — A night in the bush.

ON the 12th of June, 1838, a messenger arrived at Lockport, bringing intelligence to Gen. McLeod, at that time Commander-in-chief of our forces, that a small party of men had crossed the lines under cover of night, and were then in the vicinity of the Short Hills, awaiting orders from the provisional government. Extensive preparations had been making for months, to invade Canada on the coming 4th of July, and every possible precaution had been taken to prevent frontier disturbances until that time; and, as the present movement was calculated to frustrate our plans, I was immediately despatched by General McLeod, with orders to bring

them back to the States, if possible, without delay. On taking leave of the General, he said, "Be careful of your own safety; it will be hard to lose you, through this mad scheme." Poor old man! he little thought of the fate that awaited me, or we had not thus parted; yet there seemed to be a foreboding of evil on his mind, for when I got to the door of his apartment, he called me back, hesitated, and laying his faithful and well-tried hand upon my head, said, "If I thought it possible for you to fall into the power of those Philistines, I would sooner cut off my right hand than send you; but no! you must succeed! the path of duty is alone the path of safety! Go, and God bless you." There was a solemnity in his words and manner, that caused a dark cloud to hover, for a while, over my youthful hopes and visions. His parting look seemed still to be fixed upon me for years after; and well it might, for it was the last look of one, whom I loved almost as a father. What his fate has been since, I have never ascertained, but he deserved a brighter and happier one than has fallen to most of the faithful, devoted friends of Canada. In his own country the scaffold was erected for him, and in our boasted land of liberty, the arm of the law was upraised to strike him, for striving to collect and lead back to their homes his wronged and suffering countrymen. Were our laws of neutrality just? Was there any moral obligation attached to their observance?

The General was subject to considerable persecution by our authorities. He once favored me with two or three anecdotes connected with it, that were somewhat amusing.

"During the winter of '37," said he, "while traveling near the lines, in the State of Michigan, I learned that a Marshal of the United States was in pursuit, with a warrant for my apprehension; information having been given to your authorities, that I was levying war within your territory, against the British government. Retiring to the house of an old Scotch friend, I told him my danger, and requested him to secrete me until it was past; but he declined, saying, there were no good hiding-places in his house, which was

sure to be searched, and if I were found there, it might get him into trouble. His wife interrupted him, exclaiming, 'La, man, have you no ingenuity? Nothing is easier than to cheat the Marshal.' Taking from her wardrobe a suit of her own apparel, she ordered me to put it on, sit with my back towards the door in a room up stairs, and busy myself at sewing during the search. I found some difficulty, I confess, in completing my toilet. The dress was a mile too small, and I am a little too *enbonpoint* for a fine figure, but a large crape shawl covered the principal deficiencies. I soon heard the Marshal announced. 'I regret the necessity which compels me to search your house,' said he, 'but I am informed that General McLeod, for whom I have a warrant, was seen, not long since, to enter your doors.' 'General McLeod is not here,' answered the woman, 'and I wonder how you can have the assurance to come here for the purpose you avow, but since you desire it, you can search in welcome; only, be careful not to frighten by your rudeness, my poor old grandmother, who is extremely nervous. The sight of a stranger, sometimes greatly agitates her; so be careful. You will find her in her room up stairs.' The Marshal promised not to frighten the old lady, and proceeded to his task. After rummaging every room in the house, he opened my door cautiously, (I was busy sewing as directed,) stepped in on tiptoe, looked under the bed, and withdrew without even causing the old granny to look up, as he boasted to my good friend below. I resumed my own garb, and remained in the house till night. About 9 o'clock, a neighbor warned us, that the marshal would be there again in a few minutes. I was about making my egress at the back door, when my worthy hostess ordered me to put on her night-dress and cap, take her place in bed, and lie, said she, with much emphasis, with your face to the wall; she then left for a neighbor's. I was soon occupying her place by the side of her honest spouse, and when the door opened, tried hard to snore softly like a woman. In came the Marshal swearing like a trooper. He knew, he said, that General McLeod was in the house, and he would

search until he found him. My bed-fellow told him to do so as long as he pleased. The house was soon turned upside down, but no traces of McLeod. He was approaching the bed where I lay snoring, when my good husband seized a vessel from underneath, and swore if he did not make off with himself he would certainly throw it into his face; but fear of the contents of the great tea-cup, sent him out of the house without much ceremony.

“On another occasion, while traveling in Ohio, General Scott, of the United States army, gave me a warm chase. I stopped at a hotel, the landlord of which was a Patriot, for a fresh horse; but before he could be saddled, Scott arrived. The landlord stowed me underneath his counter, among the liquors. Scott came in and inquired if I had been there.—‘Yes,’ answered mine host, ‘he left about 15 minutes since. You will soon overtake him.’ The General ordered fresh horses, and passed into the sitting-room. The landlord closed the door after him, hurried me from my hiding-place into the boot of Scott’s coach, in the place of luggage, ordered the driver to let me out at the next change of horses, and called to the General that all was ready. ‘I’ll catch him,’ said he, ‘in no time.’ Crack! went the driver’s whip, and away we flew at the rate of twelve miles an hour. At the end of fifteen miles, horses and coach were changed. I kept my place, and overheard Scott swearing that he had lost the scent, as McLeod had not been seen to pass. He returned to try the chase over, and in ten minutes’ time I was introduced to the landlord as part of General Scott’s very valuable luggage.

“But my adventures with the General did not end here. About a week afterwards, while driving my own horse and jumper, in the disputed territory of Ohio and Michigan, I heard that my old friend was again on my track. I called on a Dutch friend, told my danger, and asked for shelter; but he found many weighty excuses for declining the honor of my company. Not so his wife. ‘I have it,’ said she. ‘John,’ (meaning her husband) ‘was just going to town, with our negro servant to drive his team; change clothes and places

with him instantly.' As I had trusted to woman before with success, I felt no hesitation in doing so again; and in five minutes' time was rigged out as a negro servant, my face and hands blacked, &c., while Sambo, attired in my fine suit, with much dignity and importance, jumped into my sleigh, and was thus charged by mine hostess,—'Now, you black scoundrel, if you fail to use the whip, or look back before General Scott drives past you, or dare to answer any of his questions, I'll flog the skin off your back with my own hands. Away with you, and recollect.' 'Oh, Missus,' said Sambo, 'me do me best.' 'That's a good fellow; you shall have a new coat and hat if you obey me,' she answered; and away he went, plying the whip most faithfully on my poor Dick's flanks. He wore my Scotch fur cap, which, from its peculiarities, was quite unlike others worn in the country, and by which General Scott had tracked me for two hundred miles. As for the Dutchman and myself, we seated ourselves in his sleigh; I took the reins and Sambo's place. In a few minutes we met the pursuer, whose fine horses were foaming. I pulled my old hat over my eyes, while he drew up and inquired of the Dutchman if he had met a gentleman in a jumper, wearing a large, high, and very curious Scotch fur cap? 'Yes, sir,' was the answer, 'he passed us half an hour since, driving hard.' 'That, my good friend, was General McLeod, of the Patriot army. He has given me a good chase, but his race is nearly run. I'll catch him this time, or my name is not Scott,' and away he flew; while we made the best of our way into the adjoining town. Meanwhile, the negro plied the whip faithfully; stimulated, no doubt, to win the new coat and hat. Scott soon hove in sight, and when within about 100 yards, began to shout at the top of his commanding voice,—'General McLeod! General McLeod! I have a warrant for you,—surrender, you can't escape;' but the crack of his whip was Sambo's only reply. 'I say,' shouted he again, when he had got nearer, 'why don't you surrender? I'm Major General Scott, of the United States army;—I've been dogging you these three days. You ought to have thrown away your military cap! ha! ha! ha!—surren-

der, General McLeod, surrender.' In a moment or two, Scott was alongside, and clapping his hand upon the shoulder of my humble representative, who averted his face as much as possible, he exclaimed, 'General McLeod, you are my prisoner.' 'Vot zur?' said Sambo, turning his black visage, and showing his ivory to great advantage; 'vot you zay, zur? you no have arres' poor Sambo!' 'You —— nigger,' was the passionate exclamation, "where did you get that cap?" "

James Waggoner, and a young friend by the name of David Deal, accompanied me to the Short Hills. The latter was one of the celebrated "Bill Johnson's" men, at the burning of the Sir Robert Peel steamboat, and the Thousand Island adventures. He was a brave young fellow as ever lived, but had no discretion. In short, as the General said to me one day, he was worth half a dozen prudent men at hard fighting, but required an equal number of guardians, at other times to keep him out of mischief. Crossing Grand Island, we landed on the Canada shore under cover of night. A few minutes before landing, I observed my young friend examining the priming of his double-barreled gun and pistols. A glance at the shore explained the cause of his alarm; it being lined for a few rods with bushes, which, in the dark, aided by the imagination, might easily be conjured into cavalry, with their night cloaks, plumes and lances. "Hist! hist!" said Deal. The boatmen lay on their oars. "No noise for your lives," whispered he. "Our bravery is about to be tried, my lads," I exclaimed, in a low voice; "look well to your arms, but by no means fire, until you see the flash of my rifle." "What is it?" whispered both boatmen in one breath. "Don't you see?" said Deal, "a whole company of horse ranged up on the bank, waiting to receive us with all the honors of war. Is it not lucky? by Jupiter!—we'll have each a horse to ride up to the Short Hills upon. Let me see," added he "bringing his piece to his face, "how easily I could coax that tall fellow with the lofty plume to dismount." "Remember your orders," I exclaimed, and with much reluctance he let the piece fall to its usual position, muttering, "It's a shame to lose so good an aim. I had him fair between old Bet's muzzle and that patch

of blue sky yonder. My aim was high, lest I should spoil the horse instead of the rider; besides, there's his feathers—how well I should look with them in my cap." By this time, the boatmen, who had been whispering together, showed strong symptoms of rebellion. "I'm going back," said one; "I didn't row you three fools over here, to be shot at for my pains, like a muskrat, by a whole troop of regular Britishers—not I; so here goes! Round to the boat, Jim, quick!" "Not so fast, my good fellows," I replied, cocking my pistols, "you have had your pay for landing us on the Canada shore, and I shall take care that you do it." "For Heaven's sake, don't fire!" said he, his teeth chattering with fear. "Oh, my poor wife! Oh, my—" "Silence! dastard!—give me your oar and lie down in the bottom of the boat." The fellow required no urging to get out of harm's way. "Now," said I to the others, "jump on shore in the midst of them the moment we are alongside. I will push off the boat for these cowards, and join you in time to mount a horse,—mind, Deal, and pick me out a good one." "Shall I stand about getting you any feathers?" he replied, "they are very nice; only see how gracefully they wave in the wind!" "A horse first," I answered. In a few moments we were near enough for Deal to make a spring of about eight feet to the shore, shouting,— "Now, you infernal Britishers, surrender, or you are gone suckers, every nigger's soul of you." I could contain myself no longer, and burst into a hearty laugh. "The rascally bushes and stumps!" he exclaimed, in a great rage; "and so we must walk our journey after all; feathers and all gone, too, by Jove!"

We found the camp of the hardy little party in the bush, about three miles from St. Johns. They were only thirty in number, mostly young men, all well armed and resolute-looking. I found, upon inquiry, that the neighbors, visited them daily, supplied them with provisions, &c., but refused to join them until a reinforcement of 500 men, (which the leaders had promised,) should arrive from the States. The traitor, Bee-mer, was among them,—Dr. Wilson, and others. I was introduced to their leader, Col. James Morrow, to whom I

delivered the written orders of General McLeod. He read them with surprise, and I soon perceived from his conversation that the party had made him their dupe. He informed me, that he had fallen in with some of them, on the American side who told him there were 3000 men in the Niagara district, ready to join him if he would only go over and act as their leader; that he was uninformed of the plan, organization, &c., of the Patriot forces, and knew not that they were opposed to the present movement. I made him a member of the Hunter's Lodge, and communicated to him such information as I deemed prudent; after which he no longer hesitated, but called the party together, and informed them of the orders he had received from General McLeod; animadverted severely upon the conduct of those who had deceived him, pointed out the impossibility of rendering the Canadians any service with so small a party of men, and concluded by entreating them to return with him at once, promising them a more favorable opportunity in a few weeks' time. After a short consultation, they unanimously resolved, that, having come to Canada to fight, they would not return without striking a blow; upon which Colonel Morrow resigned his command, but informed them, that although his duty and principles alike forbade acting in that capacity, since he had learned the truth, yet he would remain with them until they were ready to return.

Finding it impossible to change their determination, I left, according to my orders, to return to Lockport; but the alarm in the mean time having been given, I found the lines so strictly guarded by the enemy as to render it impracticable. Retracing my steps to the Short Hills, for the purpose of inducing them, if possible, to remain quiet until the 4th of July, I found Beemer acting as their leader. Colonel Morrow's influence and my own exertions prevailed until the 21st June, when a determination was evinced to fight. Beemer endeavored to prevent me from addressing the party, saying that I wished to excite them to mutiny against his authority. I, however, obtained a hearing, and expostulated with them upon the madness of their purpose. "It would ruin the intended expedition of the 4th, by forcing our friends in Canada into

the ranks of the enemy, and sacrificing their lives; it being almost impossible, for so small a party to escape from the country, after the enemy was once roused to action." Morrow joined his efforts to mine without producing any other effect than murmurs of dissatisfaction. A few Canadians, who had joined that day, making their number forty-nine, had sense enough to listen calmly to reason, but the others persisted in their folly.

Beemer now addressed them. "The time had come to strike the first blow. It was true, they might place themselves in jeopardy; but who among that little band had come there to avoid danger and not to court it? As for delays, they were always dangerous; delay had been the bane of the cause. If it was intended to invade Canada on the 4th, they would have the honor of being the first in the field; their names would go down to posterity as heroes; and their praises be sung as the true champions of liberty. It was true, the step they were about taking was a bold one, but there would be the more glory attached to it. The Canadians, too, would join them, when they knew there were men in the country who were determined to fight. Hitherto they had been imposed upon by talk, but talking would never bring them into the field, while fighting, it was hoped, would rouse them to action. There were Tories, too, whom it was intended to attack that night, who had grown rich upon the spoils of the country; now was the time to take their ill-gotten treasures from them: who had a better right to riches thus acquired, than men fighting for liberty?"

Here, then, was the secret. *Plunder* was the reward Beemer sought; and for this he was about to jeopardize the lives of the party, and ruin our cause.

I protested in strong terms against robbery. "Patriotism, love of country, and liberty had no connection with plunder. It would disgust our friends, and give to the enemy the opportunity which had been so long sought to charge the Patriots with base, unworthy motives. They were not Patriots who could rob. Strict orders had been given by our authorities to respect private property: these orders were

about to be disobeyed; and the regulations hitherto maintained, so much to our credit and the advantage of our cause, discarded. But let not those who had come to Canada to plunder think they could do so with impunity. They would be tried by court martial, and severely punished; and their disgraceful deeds disowned by the constituted authorities.”

I was answered, “Who were the constituted authorities? No authority was acknowledged here but their own. Gen. McLeod, Dr. McKenzie, Duncomb, and the whole host of constituted authorities, must henceforth, if they participated in the achievement of Canadian independence, obey them. They were about taking the first step towards making their power supreme.”

I was too much disgusted to contend farther, and Beemer, after reminding them of the murder of Messrs. Lount and Matthews, and the cruelties practiced by the government and Tories, against the friends of liberty, and swearing that their wrongs should be revenged, separated the party into three divisions. He commanded the first in person, and left the camp at 9 o'clock in the evening with his party, on a plundering expedition, in the course of which, he robbed a Tory, by the name of Overholt, of one thousand dollars in specie. The second division left two hours afterwards, to attack a party of volunteers, who were stationed in the vicinity; and the third, soon after, took up their line of march for the little village of St. Johns, where was a party of her Majesty's lancers, and was joined by Beemer on the road. Morrow and myself accompanied the third division as volunteers wishing to share in the fight, and prevent what mischief we could. About 2 o'clock in the morning, we arrived at St. Johns.—The sentry gave the alarm, by firing his carbine at us, and fled. After half an hour's fighting, during which two of our men and two of the enemy were wounded, the lancers surrendered, but not until our men had become greatly incensed, and the fearful cry, “Give them no quarter! accept no surrender!” rang in their ears; when the counter one of “quarter! quarter! for God's sake quarter!” was soon heard. They

occupied a hall in the second story of the village hotel.—Beemer ordered them to be pinioned, and then commenced his work of plunder. At 6 o'clock, A. M., he ordered ropes to be prepared to hang seven of the lancers, whom he selected for that purpose, telling them to prepare to die; "for," said he, "as sure as there is a God in heaven, I will hang you on the trees of yonder forest, to avenge the death of Lount and Matthews." The poor fellows begged him to consider that they had nothing to do with the execution of those men; that they had wives and children, who were innocent and helpless; and that he had accepted their surrender as prisoners of war, imploring him with tears, to spare their lives; but he replied, that he had only accepted their surrender, for the purpose of hanging them; that he was not to be turned from his purpose; and again bade them make their peace with their Maker, as their time was short.

By this time, the other division had joined us, and our prisoners numbered about seventy. These, with the exception of the wounded, who were discharged, were all marched in procession, the doomed men in front, to witness the intended hanging match. When, however, within about 200 yards of the bush, fearing that longer delay would be fatal, and having consulted Colonel Morrow, who approved of my intentions, I gave the word of command to halt! The whole party obeyed, and all eyes were instantly turned upon me. Beemer turned round, and was met by my trusty pistols staring him in the face, and I noticed that the coward quailed before them: the man who was about sending seven men, unprepared, into eternity, could not look, without the greatest trepidation, into the muzzle of a cocked pistol! "Jacob Beemer, by virtue of the commission I hold in the Patriot service, which entitles me to command here, and, in the name of the provisional government of Canada, whose orders you have disobeyed, I now place you under arrest." Calling two men from the ranks, I ordered them to take him in charge. They at first hesitated, but the sight of my pistols, brought them to their senses. Inquiring of the other leaders, if they disputed my right to command the party, Major Wait answered

promptly, "No, I wish you to do so, and put an end to these horrid proceedings." After promising to send a ball through the first man who should hesitate to obey my orders, I continued: "Your conduct, Beemer, has been most disgraceful. Disregarding the common usages of war, you have been guilty of the most shameful excesses; setting at defiance the authority of the provisional government, you have, under the guise of patriotism, committed the crime of midnight robbery; you have plundered your prisoners in open day, in the presence of the people of Canada, in whose behalf, you profess to have made this movement; and, what is still worse, having accepted the surrender of these men as prisoners of war, you were now, about to add to the black catalogue, the horrid crime of hanging seven of their number upon the trees of yonder forest. There lie the ropes, prepared by your orders, for the consummation of the cold blooded murder. Your conduct, should you and I have the good fortune to reach the American shore, will be investigated by the proper authorities. But I am unwilling to believe, notwithstanding these ominous preparations for bloodshed, that you really intended to carry out the measures you have avowed; and I now give you an opportunity to retract. In the presence of these witnesses, I implore you, for your own sake, if you are aught but a demon in heart, to disown the intention of murder."

Without hesitation he replied, with an oath, that such was his determination, and, but for my interference, he would have hung them all, to avenge the blood of Lount and Matthews.

"I thank Heaven," I replied, "that I am here to thwart you. Now, sir, empty your pockets of the booty you have collected this morning."

With great reluctance, and quivering with rage, he allowed one of his guards to search him; and, from his coat, waistcoat, and breeches pockets, watches, purses of money, and valuable trinkets were drawn forth and laid in a heap before him. "Now, sir, whose coat and waistcoat have you purchased this morning?" "They are mine," answered one of the prisoners, "he compelled me to exchange for his old ones, after our surrender." "Strip, scoundrel, and let us see you

in your own regimentals again." A loud laugh arose from all hands while the re-exchange took place. Ordering the prisoners to be untied, I directed them to come forward and select their property from the heap which Beemer's pockets had yielded; which being done, I said to them, "I am about to discharge you, provided you are willing to swear upon the Bible I hold in my hand, that you will immediately retire from the British service, and never again take up arms against the Patriot forces." I then administered a solemn oath to each to that effect, and concluded by saying, "You are now discharged from custody. Return to your homes; and when you see the standard of liberty unfurled by your countrymen, I hope to see some, if not all of you foremost in our ranks. But carry with you, wherever you go, the conviction that the Patriots of Canada are neither robbers or murderers, but actuated by more noble purposes than have been evinced by the commander of this party; and rest assured that he will receive that punishment at their hands which his disgraceful conduct deserves. And, inasmuch as mercy has been extended to you on this occasion, and some of your number have been saved from a fearful death, should any of this party, who have been your captors, and are not accountable for the acts of Beemer, unhappily fall into the power of the authorities you have served, (which may Heaven forbid,) let the remembrance of this day's deliverance, warm your hearts towards them, and lead you to exertions in their behalf. For the part which I have acted on this occasion, I ask not your thanks nor your gratitude. I have only done my duty to the cause I serve; and now, farewell." Warmly did they shake my hand, and many a "God bless you" escaped from their lips. Those whose danger had been most imminent, wept freely during the occurrence of the foregoing scene. Every man in our party, except Beemer, appeared to rejoice at their liberation. One of the released lancers asked to have his arms restored to him, but I told him they were ours by the usages of war, and he must content himself to walk home without them, where they could be of no service, if he intended to keep the oath he

had just taken. The officer in command of the lancers also requested to have the colors of his company returned, but was informed that trophies of that kind were very valuable in the United States. I observed that my young friend Deal had accommodated himself with a spirited horse, and was showing off, to great effect, the beautiful plumes he had captured from the lancers. He had behaved most gallantly during the little action of St. Johns; and the same might be said of the whole party, generally; not one, except Beemer, had misbehaved in any respect, and their conduct and demeanor convinced me that, however indiscreet they had been, their motives were good.

After the prisoners had retired, I resigned the command of the party into the hands of Beemer, and on the following day left them, thinking myself fortunate in escaping his vengeance. He swore that he would have satisfaction for my interference, &c., by sending a ball through me, which, however, he would scarcely have found courage to do, even behind my back, so pusillanimous was he in all his actions. Before leaving, I told the party of my intentions, and advised them to separate, and, if possible, find concealment until the present danger was past, the whole country being in pursuit. I afterwards learned that in less than an hour Beemer was left alone. He had neither the ability or courage to lead his men out of the danger in which he had placed them, to gratify his own evil passions.

Having many friends in Canada, I felt no concern about myself, nor dreaded danger. I could remain in the bush until the first burst of excitement was over, and then take private lodgings, and return, when convenient, to the States. Little did I dream of the dark cloud which was fast gathering over my head. Sanguine in my expectations, and almost an enthusiast in our cause,—confident that I had been walking in the path of duty, and that He who had hitherto been my protector, in more trying times than this, would still vouchsafe His gracious care, and preserve me from falling into the hands of the enemy, I knelt down that evening in the forest, with feelings which, at this distant day, I recall with

pleasure, and held communion with that Eternal One, into whose hands I could with confidence commend my spirit, when the shades of night called me to repose. In deep humility and trusting confidence, I felt my spirit drawing near to the footstool of Omnipotence, and my petitions ascending on the wings of desire to that gracious ear which is never closed, when sinful, erring man pleads humbly with his maker. Could I forget, at that time, and had I no petitions for my late companions, who were in greater peril than myself? Had I no blessings to ask for those engaged in the cause which I so much loved; no aid to implore from the God of battles? Could I forget, at that solemn hour, when the soft murmurings of the evening breeze seemed to whisper tales of loneliness, solitude and sorrow, the distant friends, whose hearts were made desolate at my absence? Oh, blessed and happy privilege! which allows man, in humble confidence, to breathe forth the aspirations of his heart, to a Heavenly Father, for mercies and blessings to be showered upon the heads of the absent, loved and worshipped ones. Thrice blessed privilege! which encourages him, to pray for those who have wronged him without a cause; judging him, it may be, harshly; holding him responsible for actions which his Heavenly Father lays not to his charge, and arraigning him before that bar where eternal justice holds him guiltless.

"Sweet hour of prayer! sweet hour of prayer!
That calls me from a world of care,
And bids me at my Father's Throne
Make all my wants and wishes known."

Thus prepared, I laid down to rest,—my bed and pillow the faithful bosom of old mother earth,—my canopy a single blanket, and the clear blue sky of Heaven, studded with its sparkling gems of distant worlds, brighter and happier it may be than our own home of earth; in which sorrow, sin and death hold no dominion; where the footsteps of God's creatures leave no marks of blight and crime, no print of oppression and tyranny no hapless beings crushed beneath their ruthless tread; where the din of battle, and deadly strife

between those who were created friends are never heard; but universal love, peace and happiness reign in never-ending triumph! Such a scene might have been even here. The wisdom, goodness, and power of Omnipotence has fashioned all terrestrial objects to this end; has spread with a bountiful hand the countless treasures of His storehouse, inviting all to partake in peace, amity and love; has laid out a flowery path for human life, pleasant, and beautiful to walk in; yet man, in his folly, has made it a rugged, uneven road, demolished all that was beautiful, planted briars and thorns, and strewed it with relics of crime and woe! Yet has eternal goodness opened a new path, brighter and fairer than the first to him who treads it with undeviating footsteps, but rugged to the faltering and wayward, leading from the old broad road of sorrow, woe and death, upward through fairer scenes to the pleasant fields of Heaven. Reader, a poet has described the entrance to this new path in words which thou mayst understand,—

Methinks I see a radiant cross displayed,
A wounded Saviour bleeds along the shade.

And the language of inspiration thus pictures its beauties to the weary mortal, who would turn aside from the paths of sin,—

“The wilderness and the solitary way shall be glad for them, and the desert shall rejoice and blossom as the rose.

“And the parched ground shall become a pool, and the thirsty land springs of water: in the habitation of dragons, where each lay shall be grass with reeds and rushes.

“And an highway shall be there, and a way, and it shall be called the way of holiness; the unclean shall not pass over it; but it shall be for those, the wayfaring men, though fools shall not err therein.

“No lion shall be there, nor any ravenous beast shall go up thereon, it shall not be found there:

And the ransomed of the Lord shall return, and come to Zion with songs, and everlasting joy upon their heads: they shall obtain joy and gladness, and sorrow and sighing shall flee away.”

Sleep, sweet and refreshing, soon bound my spirit in her silken chain, and its tabernacle of clay feasted upon the luxuries of rest. Thus doth Night spread her mantle over the earth, and rain her blessings upon weary man. Her dark shades shut out, for a season, those earthly visions which excite his physical, mental and moral powers, to powerful action, toil and fatigue. Though the day be long and wearisome; though its duties hang heavily on his hands; though care and anxiety harass his spirit and becloud his brow; though sorrow and grief wrap their pale, sickly shroud around him, friends forsake and foes insult, till the pleasures of earth become tasteless and insipid; though the sunshine of his soul and the brightness of its wonted fires, are fast dying away forever, and the star of hope has gone down behind the hills of time, or is hidden from view by the dark clouds of adversity, still doth Night, like an angel of mercy whose countenance weareth the sweet, winning smiles of goodness and peace, come with outstretched arms, inviting the weary and heavy laden, to lay aside, for a season, their load of earthly woe, and repose on her bosom of rest! Hushed be his sorrows, and forgotten aught and all that has power to pain, while he surrenders himself to the influence of "tired nature's sweet restorer."

Morning, in all its beauty and loveliness, soon dispelled the mists of night; and the caroling of birds awoke my spirit to join in their sweet songs of praise. The freshness of the morning breeze—the beauty of the rising sun—the pearly dew-drops glistening in his rays, together with the melody which awoke me, all combined to banish every unpleasant sensation; and, in spite of hunger, (having eaten nothing for three days,) and the dangers which I knew surrounded me, I joined in the general rejoicings of nature, and welcomed the morn with feelings of unalloyed pleasure. Thus it is that thou, O Morning! art emblematical of youth, and beauty, and love, and hope. Drawn by the foaming steed of old Time, thy chariot the solar ray, thy herald the twilight's faint gleam in the east, and thy mantle the brightness of the sun, thou comest in the glory of beauty, trans-

cent in loveliness, and radiant with hope, to grace the new-born day! Darkness, and solitude, and mists fly at thy approach; and the night tears of dew are hastily dried up by thy smiles. Nature, animate and inanimate, awakes and sings when thou comest in thy glory, and mortals hail thee with the inspirations of hope!

CHAPTER IV.

Theft.—The friendly Magistrate.—Starvation in a Log-house.—The Little Orphan Girl.—The Peasant Woman.—The Enemy.—The Chase and Capture.

IN the course of the morning, a cow, in her peregrinations through the forest in search of food, accommodated me, after an hour's coaxing, with some of the fruits of her labors. I humbly beg the owner's pardon for the theft, and the reader's for my impudence in recording it. It is a melancholy fact that I followed her a long time with an old sap-trough under my arm, and at last, by dint of perseverance and cow tactics, succeeded in obtaining about one quart of the delicious beverage,—not, however, before I had caught three or four random kicks from her cowship. Now, curious reader, thou wilt doubtless wish to learn how I managed, according to the fashion of the dairy, to *strain* my ill-gotten treasure; but I tell thee it is none of thy business. Hunger is an importunate, and, withal, very hard master, and it is possible that Jonathan drank the old cow's health without due observance of the tedious code of dairy laws. Such things were, doubtless, done in the ancient days of simplicity and "*not-over-nicety*." At any rate, it was "swate to the taste," as well as strengthening to the body. How my lips smack, at this distant period, when I think of it!

I remained in the bush until evening, when, after secreting my rifle, sword, horse pistols, and indeed whole kit, (with the exception of pocket pistols,) in the trunk of a decayed tree, where I could return for them, if necessary, I repaired

to a small village where lived a faithful friend—a magistrate—thinking to trouble him for a few days' private board and lodging. I found, to my surprise and chagrin, the village full of soldiers—militia of the country—and myself in the midst; but it was too late to retrace my steps, so assuming the gait and manners of one of their own country people, I passed on to the house of my friend, dropping now and then a casual remark of, "a pleasant evening my lads;—any more of those scoundrel rebels taken? We are having a fine hunt after the villains." "They must be smart chaps to escape us," one replied. "They are nearly all captured, and the remainder are so closely pursued that it is impossible for a soul to escape. We shall have a fine hanging match soon." "I will go a hundred miles to see their necks stretched," I answered, and passed on. Doubtless they took me for a rank Tory.

Ringing the bell at the door of the house where I hoped to find refuge, the lady of my friend answered it, but placed her person before the door, so as to prevent my ingress. She inquired, in a trembling voice, my wishes; and her manner convinced me that she did not recognize me, and something was wrong. "Is Mr. H—— at home, Madam?" "No, sir." "Will you please to tell me where I can find him?" "I do not know where he is,—perhaps he may be at Smithville, perhaps not." "When will he return?" "I do not know." "Can I remain here until he comes home? I am anxious to see him on business." "You are a stranger, sir, and as times are now, I cannot invite you into my house. We know not who are our friends or enemies." I was about turning away, in disappointment, when I heard the voice of my friend, who had recognized my own, exclaiming from within, "Good God! is that you, Mr. Miller? My dear wife, allow him to come in." "Oh, merciful Heaven!" exclaimed the almost fainting woman, as she closed and bolted the door after me. "Oh, sir, if you would save yourself—if you would not ruin us, stop not a moment!—fly instantly or we are all lost. Oh, God! that it should come to this!" My friend, in an adjoining room, thrust his head from a

private recess, and extending to me his hand, said, "I am very sorry to see you,—hoped you had escaped to the States; but I can not serve you,—would to Heaven I could. I am suspected of aiding our party, and we supposed when you rang the bell just now, that my enemies had come with a warrant for my apprehension. They will be here soon, and it is barely possible I may escape their search in this closet; but it will not do for you to remain. Avoid the road; it is full of the enemy; gain the bush as soon as possible, and call on some of our friends who are not suspected. God Almighty bless and protect you, for your danger is great. Farewell!—don't despair,—Canada will yet be free, and you live to see it." Forgetting everything but danger, I hastened from the house without thinking to ask for food, which I so much needed, passed carelessly through the crowd of the enemy who filled the road, whistling as I went, "God save the Queen,"—always a safe passport and watchword with the enemy. Soon as I dared, I got over the fence, and proceeded towards the bush, but found sentries stationed so near each other in the outskirts, as to make it impossible to get past them without being seen and fired upon; when, of course, the whole body of the enemy would soon be on my track, and escape would be next to impossible. Discovering two large logs lying in the open field, I found, upon examination, that a fire had been kindled upon them, which, fortunately for me, had burned a hole just large enough to admit my person. Here, then, was a hiding place, not likely to be suspected; where I could remain for a day or two, until the enemy should withdraw from the immediate vicinity. Pulling some grass for a pillow, and transferring two rails from an adjoining fence upon the logs, I took possession of the snug little fortress, with much satisfaction; pulled the rails over the hole, so as to form a partial screen, and soon fell asleep, to dream of my mother's pantry, always abounding in dainties tempting to a hungry man; but somehow the more I ate the sharper my appetite grew, until at length its very intensity awoke me. Alas! it was but a dream; and all hope of immediate relief was gone.

That night was long and wearisome, and daylight brought no change for the better, with the exception of the warm rays of the sun. There were the enemy at their posts on the lookout for myself and late companions; but little dreaming that one whom they sought was so near; and the satisfaction of sleeping under their very noses, and cheating the devil in open day light, enabled me to endure hunger, thirst and close imprisonment. I lay upon my left side the whole time; being unable, from want of room, to change my position in the least; but could now and then raise my head and look, with a provoking smile upon my would-be captors. The day closed with rain, and the night was cold and cheerless; yet I determined to keep my position until I could see the coast clear, or was actually starved out. I felt little concern for my safety, having more than once before escaped from the enemy when in even greater peril; and why should I now distrust the constancy of dame Fortune? Morning again dawned upon me in all its glory, but I was not in a condition to enjoy its beauties. The cravings of hunger had passed away, leaving only a sensation of extreme weakness, with occasional pains. About 11 o'clock, a husbandman, probably the owner of the field, came into it with a load of manure, the last of which he emptied in a heap close beside the logs where I lay; and, without raising, or even shifting my head in the least, I looked him full in the face. Although aware that nearly all the farmers in the country favored the Patriot cause, I durst not discover myself to him, for had he proved a friend, the enemy being in sight, there was danger of his inadvertently betraying me in the surprise of the moment. I have since learned that he was a friend.

About 4 o'clock, P. M., the enemy's bugle gave me notice of their intention to withdraw; and I thanked God in my heart for my deliverance. In half an hour's time, their sentries were all called in, and the whole party (an entire regiment of militia) were out of sight and hearing. When the last sound died away, I crawled with much difficulty from my hiding place. I was so weak as to be unable to stand on my feet, and my side, on which I had lain for forty-four

hours was perfectly benumbed and insensible. I had not, however, forgotten how to creep, and I gained the bush, a distance of 150 yards, by using my hands and knees. After a short time, I was enabled to stand on my feet and walk a few paces. Feeling it impossible to live much longer without food, I resolved to try my fortune at a game of chance. I made the best of my way to the nearest house, which, fortunately, was situated some distance from the street and near the bush. Two young ladies, one apparently about eighteen and the other thirteen years of age, were in the garden near me. I observed that they looked rather suspiciously at me; but trusting to the goodness and compassion of the sex generally, I feared nothing, except that through timidity they might introduce me to more dangerous acquaintances. Making my best bow, I inquired of the young ladies the name of the proprietor of the premises, and was a little startled at the reply, which informed me that a British half pay officer lived there. "Is he at home?" "No, sir, he has gone out with his lady for a drive." "Indeed! then I cannot see him at present;—pray, ladies, how long shall I have to wait?" "I do not expect him home before dark," was the welcome reply. Addressing the eldest, I said,— "My name, Madam, is Miller; will you pardon me for asking yours?" "Oh certainly,—my name is ———." "I am acquainted with a gentleman of that name in New York; he is a Canadian refugee." "Oh, sir, he is my father! tell me if he is well; if he is safe?" and her countenance indicated better than words could have done, how deep an interest she felt in her parent's welfare. I no longer hesitated, but made myself known, and was assured of my present safety. The little girl with her was an orphan, whom the British officer had adopted as his own; and Miss ———, had come to spend the afternoon with her, in the absence of her adopted parents. On informing them of the length of time I had fasted, the orphan girl approached me, timidly took my hand and looking up into my face, said, "Oh, sir, I am so sorry for you;—almost starved!—seven whole days and nothing to eat or drink, but a little milk, did you say? and

hunted like a wolf of the forest! And will they shoot or hang you, if they find you? Oh, this is dreadful! Have you any mother?" "Yes, my dear, I have a very kind mother," I replied. "Oh, sir, how dreadfully she would feel if she knew of your sufferings. I had a mother once, sir, and she was good, and kind, and gentle to me, but she has gone home," and she pointed to the clear, blue sky, "and I am left an orphan; no father, no mother, no brother, no sister,—all—all gone home, and left me alone in the world," and she sobbed as if her heart would break. "My dear, you have a Heavenly Father, who loves, and will always protect the poor orphan; and He will be better than earthly friends to you, if you only love and serve Him." "Oh, yes," she answered; "so He is. He has given me kind, very kind friends here, who call me their child, and love me, and I love them,—indeed I do;—but they are not like my own kind mother who has gone to Heaven. They tell me it is wrong in me to wish to die; but sometimes, I can't help praying to be taken home to Heaven, where mother and sisters are!" Had I no tears to shed with her? Hast thou none to spare, kind reader, for the lonely, desolate orphan?—While she busied herself with the young lady in setting the tea-table, I chanced to look at myself in the glass, and was shocked at my own image—my beard being more than an inch long. Hunger and anxiety had doubtless produced this effect. The orphan soon furnished me with the shaving apparatus of her adopted father, saying, "Your own mother would hardly know you with that frightful beard,—do, pray, shave it off."

Sitting down to a well furnished table, I ate with a thankful heart. While thus engaged, my little friend, who seemed less timid since I had got rid of the "frightful beard," laying her hand on my shoulder and looking confidently in my face, told me to eat just as much as I could; said she was sure I was not a bad man; wished I could stop where she could carry me food as long as I wanted it; and if she had only a home of her own, such as she once had with her kind mother, she would not let me go away, until all danger was

past. Among other questions which she put to me, one was if I had any sisters? I replied that I had one about her own age. "Oh, how the poor girl would feel, if she knew her dear brother was here! I'm so glad we can feed you; and when you get back to the States again, you'll go home and see your mother, and sisters, and all, and tell them all about these dreadful times here; and they will love you and kiss you so! How I should like to be there, just behind the door, and peep out and see you all, and listen to what you would say. Oh! it would be so delightful, and you would all be so happy."

"Your friends," said I, "will soon come home, and they, you say, dislike the rebels. Now, will you tell them that I have been here in their absence, and have them cause search to be made, and have me captured?" "Oh, no, sir; God forbid! I will never say one word about it, until I hear that you have made your escape; and then I shall be so happy, and will tell them all. If they are angry at me, I shall be very sorry; but it won't make me feel that I have done wrong. If they call you a rebel, or bad names, I shall know that you don't deserve it, and I'll tell them so, and may be they'll believe me." Stealing a kiss from the sweet child, I replied, "Remember, that many, very many of those they call rebels, are good men, and do what they think is right. Be kind to them when you see them, as you have to me, and God will reward you for it; and when I get home, I will tell my mother and sisters all about the kind little orphan girl of Canada, and they will love her, and pray to God to bless and make her happy." And thus we parted. Often has the image of that sweet orphan child, in my darkest hours, appeared to me in my visions of the past, and made me feel happier.

The refreshments I had taken made me feel quite well, with the exception of weakness; and with a thankful heart I again sought safety in the bush, with the intention of keeping it, until I should arrive at the house of a friend, distant about ten miles, on the mountain road.

At sunset I stepped out of the bush to reconnoitre, and was instantly seen, and pursued by a troop of cavalry which occupied the road 150 yards distant. Turning back, I ran in an opposite direction, until out of sight of my pursuers, when I again changed my course, and soon had the satisfaction of hearing them shouting and hallooing to each other in the distance. I traveled all night, although not a star was visible to guide my course, and there was constant danger of putting out my eyes in the thick underwood. Break of day found me, quite exhausted, in the outskirts of a small clearing. Lying down to rest, I soon fell asleep. The sun was high in the heavens, when a noise awoke me, and on opening my eyes, I saw a man about fifty paces distant, driving some cows past; but he took no notice of me, although I lay entirely exposed to view. After half an hour's travel, I came to a clearing, containing two dwelling houses. Feeling it impossible to go farther without food, I determined to run the risk of paying my respects to the occupants of one of the buildings; though which to choose was my greatest difficulty. Something whispered me, to avoid the one nearest, and I went around to the opposite side of the clearing, and approached the other, which served to cover me from the first. A lady, of respectable appearance, was in the yard feeding poultry. Several small urchins, whose countenances were the index of the matron's, were playing around.

"This is a fine morning, Madam,—I trust my appearance, although a stranger, will not disconcert you;" I added, for, at my first salutation, she suddenly started, letting the dish of corn fall to the ground, to the great joy of the chickens, which at once volunteered their services in gathering it up. She hesitated a moment, and then replied, surveying me the while with a scrutinizing eye: "These are strange and trying times, sir, but I ought to apologise for my awkwardness just now. May I inquire your name and pleasure?" "My name is ——, and being a citizen of the United States, and a stranger in this region, I wish to inquire the way and distance to Smithville, whither I am going." Pardon, indulgent reader, for I told her a plump lie. "It is only two miles and a half to that place;"

she answered. "Pray, Madam, can you tell me if any more of the Short Hills rebels have been captured?" "I hear," said she, with a sigh, "that nearly all have fallen into the hands of their enemies. It is dreadful to think of it, sir; for, they say, every man will be hung." "I know of one whom they have not yet caught, and who will feel very thankful if you will furnish him with a breakfast. Madam, my name is Miller,—and the British government would feel great pleasure in stretching my neck; but, as I do not wish to give them that trouble, nor yet to starve to death in the bush, I have ventured here for temporary relief." "Go into the house quick, sir,—quick! quick! or you are lost." She followed me in,—after placing her oldest boy on sentry, to watch, and report if he saw any movement at the other house,—she informed me that it was occupied by several men, who were on the lookout for the rebels, and added, that her husband was a rebel at heart, but had been under the necessity of turning out with the militia of the country, or be thrown into jail and lose his property. "Indeed," she added, "nearly all the Canadians would fight against the government, if there was any prospect of success." I remained an hour, ate a hearty breakfast and took my leave, after being assured there would be no danger in traveling the road. I was not a little chagrined to find that, with all my exertions, I was only three miles from the logs where I had lain two days.

Finding it difficult to get through a large swamp which lay in my way, I was foolish enough to risk traveling about three miles in the road. I had passed the swamp, and in five minutes more should have entered the forest again, which extended to the house of my friend, when a lieutenant and subaltern officer belonging to the enemy's cavalry, suddenly made their appearance from a hill in the road, which, until then, had prevented my seeing them. I turned carelessly aside, got over the fence into an adjoining field, about one-fourth of a mile in width, the opposite side of which was bounded by, as I supposed, an extensive forest, and waited for the two gents to pass, supposing, from their actions, that I was not noticed. They rode slowly along until within twenty-five yards, and then charged upon

me, with as much energy as would have served to rout a host of the enemy—shouting, “surrender or die!” Not intending to do either, I ran across the field to the bush. The lieutenant’s horse cleared the fence (seven rails high) at the first bound, but the other balked, and his rider was forced to dismount and follow on foot. To my surprise, I found the bush to be only a narrow strip, less than a quarter of a mile in depth, but I had no other alternative, and ran through it to a second field, equal in extent to the first, beyond which was an extensive swamp, that would have enabled me to baffle my pursuers, on whom I had gained considerably; but, alas! my strength was fast failing, and I became sensible of the fearful odds against which I had to contend. I put my hand to my pocket, where I expected to find a pair of old and tried friends, in the form of pistols; but, to my horror, found they had deserted their master in his hour of greatest need; a hole in the bottom of my pocket told the manner of their escape. My pursuers were armed cap-a-pie, and my strength seemed insufficient to carry me across the field. “Stop,—stand,—surrender, or I’ll fire!” had been constantly sounding in my ears during the chase, without producing any other effect on me than a shout of defiance, intended on my part to provoke them to discharge their carbines and horse-pistols, that I might have the better chance with my own small arms, when we should come to close quarters; but now, as they were gone, I hastily prepared for the worst. I carried a large pocket-book in my side pocket, containing papers of the utmost importance to our cause; and my life I valued as nothing, compared with their safety.—Thrusting my hand into my pocket, I drew it forth; but the emergency of the case would not admit of any separation or reserve of its contents, which were of some value. Holding it before me, I passed near a pile of rails in the middle of the field, when, fortunately, my pursuer on horseback, turned his head, and called to his comrade to hurry on, during which, without either slacking my pace, or stopping, I threw it underneath the rails—and it was safe! When I reached the opposite side of the field, I was so exhausted as to be unable to climb over the fence. The swamp was within eight yards, and once

fairly into it, my pursuers had not dared to follow. The lieutenant on horseback was not so near by a few paces as when the chase commenced ; but, alas, like a drowning man, I was so far gone as to be unable to lay hold of a life preserver within reach!

Reader, Jonathan threw himself upon his back, and cursed the Philistines, into whose hands he had fallen. Thus ended his dreams of a glorious campaign in Canada—of splendid victories won—of the triumph of liberty over our northern regions—and deeds of noble daring and renown, performed by his humble self! Alas, that hopes so bright and promising should thus be blasted! The author confesses, with feelings of deep mortification, that his end was inglorious and unenviable.



CHAPTER V.

The brave Lieutenant.—Falsehood.—The Board of Magistrates.—Trip to Headquarters.—An Unpleasant Occurrence.—The Rescued Lancers.—Arrival of Col. Townsend.—Scene at the Pavilion Hotel.—The Author in Prison.

“If you make a single motion, that moment is your last,” said the brave officer of cavalry, who had the honor of capturing me. He was twenty yards distant when he delivered this important speech. Before he could muster sufficient courage to approach nearer, he described a half-circle round me, to see if I had any arms, or dangerous weapons for defence. When satisfied that I was harmless in this respect, he threw himself from his foaming steed, and advanced, with his drawn sword in one hand and a pistol in the other ; evincing, however, great caution in his movements. “Now you d—— rebel, if you move, or call for help, I will blow your d—— brains out. Get up instantly, and march back to the road.”

“Not so fast, fellow, I shall not move an inch until rested; and, in the mean time, you will perhaps oblige me by showing your authority to command me, and also, for applying the epithet of rebel to an American citizen, for such I claim to be.

Rebel, sir, is a very significant term to apply to a stranger, and I caution you to be more careful."

"If not a rebel, what are you? Why did you run from us? Why not stop, when called upon to surrender? You are the leader of the Short Hills party, and your men are near, in this swamp, or you would not have run in this direction: up and march back, or I will run you through," and he pricked my side with his sword.

"Shame on you, coward! to draw your sword on a defenceless man! You are a disgrace to your profession. As for men in this bush, there are none that I am aware of, so do not frighten yourself to death. When I have rested, I will return with you to the road, and, I dare say, I can convince you, I am not the great personage you speak of. In the mean time, make yourself easy. You will lose your labor in threatening me, as I shall not stir until I get over the chase you have given me. Fine times these, when a man can't travel through the country without getting a troop of blackguards after him, and be complimented with the term rebel, too,—very fine times indeed!"

By this time his companion had come up, and while one held a cocked pistol to my head, the other, with a trembling hand, ventured to search my pockets—whether for booty or pistols I know not—certain I am, however, they found neither. The only article on my person was the pocket Testament, upon which I had sworn our prisoners at the Short Hills. I had made it the companion of my travels, in all my expeditions in Canada, and had an invention of my own for keeping notes in it. They examined it closely, but could make nothing of it. It was afterwards sent to all the great geniuses in Canada, in search of a reader, and at last returned to me. Had they *guessed* how many valuable secrets it contained, I had never seen it again.

I was again ordered to get up, and again refused to do so, upon which, the fellow who came on foot, snapped his pistol at me, but it either missed fire, or he had taken the priming out, thinking to frighten me into obedience. I laughed at him for his pains, and told him to try again with fresh priming.

When sufficiently rested, I returned with them to the road, where the whole troop were assembled—about thirty in number—and such a *pow-wow* I never saw before or since ; such boasting, shouts of rejoicing, horse manœuvring, prancing of steeds, and warlike capers of every description! Every man in the troop proved himself, by his words and mad freaks. “half a horse and half an aligator.” They had captured a d—— rebel, and although but two of their number has participated in the glorious chase, yet, the whole troop would share in the honor ; and already they felt themselves of as much importance as the Duke of Wellington’s Horse Guards. They had won eternal glory in a single hour.

“Gentlemen,” said I, “you can spare yourselves all this rejoicing. I shall take care that you learn a lesson from the events of this morning, which you will not soon forget. I give you fair warning that I am not the prize you deem me.”

“Pray what are you then? Why did you run from us if not a rebel?”

“I am an American, traveling on private business. I own the chase we have just had looks rather suspicious until explained. But every man knows his own affairs. My reasons for trying to avoid you were simply these: I have private business of importance to transact, which can not be delayed. I crossed into the country the morning after the affair at the Short Hills, and was advised to return, as I would be liable to be apprehended and thrown into prison, by the first party of military I might chance to fall in with. This, however, did not drive me back, but I determined to travel in the woods, avoid the public roads and parties who are out in search of the rebels, transact my business, and return in the same way. What my affairs are, which are so urgent, is none of your business, gentlemen; but it was to prevent any delay or interference from you that I ran when we so unfortunately met. Now, you can act your pleasure with reference to holding me in custody, or letting me pass; but remember, if there is any law or justice in the land, I will have ample damages for every moment I am delayed,

and for every insult you may choose to offer me. What I say, you will find me able to perform, for I have friends who will see justice done me."

Reader, the author must confess his sins to thee again. The above concatenation of lies was invented and dealt out to his captors on the spur of the moment, for the very laudable purpose of saving his neck, if possible, from being stretched; and if thou canst lay thy hand on thy heart and say thou wouldst not have done likewise, under similar circumstances, thou art a very honest, conscientious man, and withal an exceeding great fool,—for which last expression, applicable to thee, reader, under the foregoing hypothesis, he again humbly begs thy pardon. Had he thought, however, that he had done wickedly, and actually deserved the kind offices of "Jack Ketch," he might possibly have been so foolish as to assist in twisting a rope wherewith to hang himself.—Honest men sometimes differ upon points of great nicety; none but genuine fools being infallible.

The officer most active in my capture, listened attentively to my fabrication, and, after consulting his subalterns, answered: "Your story is plausible, and may be true: I hope it is,—still, it is my duty to take you before the nearest magistrate, and leave you to his disposal. If you are released, I will bring you back to this place, if you wish it, and make you any reasonable compensation for loss of time."

He then ordered my arms to be tied behind with ropes, and directing his troop to proceed on their way, mounted me on horseback behind the subaltern who had assisted in my capture, and the trio rode a distance of three and a half miles to the "forty," where "the American traveler" was soon introduced to the village magistrate, a nice old gentleman of apparently very modest pretensions. He listened with the most profound attention, first, to the story of my captors, then of myself; drummed his fingers for twenty minutes upon a Bible which lay before him, until inspired by sound wisdom and judgment, and then gave utterance to a determination on his part, not to interfere in the matter; at the same time advising my captors to be cautious in their

dealings with me, as there was no proof of my liability to arrest. The lieutenant, however, rejecting this excellent counsel, took me on about five miles farther, where two magistrates resided; but met with the same success as at first. They said they would not meddle with me, and my captors had better either take me back where they found me, or carry me to St. Catharines, where a board of magistrates was sitting, which would probably assume the responsibility of discharging me. To my mortification, the fellows decided to go forward, instead of back; but I affected indifference upon the subject, merely telling them their bill of costs would be a "considerable pretty sum," if they meant to drag me through the whole province with my arms pinioned. They promised, faithfully, to carry me back, unless ordered otherwise whither we were going.

At St. Catharines, the board of magistrates, among whom were two good Patriots, who knew me well, was about discharging me, when orders arrived, that every person apprehended should be forwarded to head quarters at Drummondsville, Niagara Falls. All hopes of escape were now at an end, unless a favorable opportunity should occur, to give my watchful guards "the slip" on the way. I continued to affect unconcern, although, in truth, my neck began to feel somewhat uncomfortable.

A wagon was procured, and I took my seat between the guards, for a drive to the Falls, heartily wishing wagon, guards, ropes, and all, myself not excepted, in the bottom of Lake Erie. Passing a hotel, one mile from head quarters, a very unpleasant denouement took place. One of the lancers, of Short Hill memory, rushed from the door, exclaiming, "Oh! Holy Virgin, have they got you! I would rather see my own brother a prisoner; but they shan't hang you by ——! Oh dear! Oh dear!" My two captors turned deathly pale. "Good heavens!" said they, "is it possible! and are you really a rebel? We believed you innocent;" and the kind feelings which they manifested, made ample atonement to me for their previous conduct and agency in the affair. One of them whispered to me, "Why did you not tell me the truth?

you should never have come here. I am a Patriot myself, in heart, but have been obliged to turn out on military duty or go to jail."

Arriving at the Pavilion Hotel, a scene ensued which baffles description. The lancers, and others, who were our prisoners at the Short Hills, at once besieged me; and my hands, were tortured for some time with their warm squeezes and shakes; and my ears inundated with protestations of sorrow at seeing me a prisoner, and eternal gratitude for my interference in their behalf. Some of those who were in the greatest danger on the occasion referred to, shed tears; and all swore that not a hair of my head should be injured. The 24th Regiment, and several hundred militia and volunteers were present. All gathered around the wagon where I sat, the officers, with one or two exceptions, expressing their regret at my having been taken. They had been informed of my conduct at St. Johns, and had hoped I should escape.

Meanwhile the lancers were describing my interference in their behalf to the surrounding soldiery, who appeared to be much excited; and I heard hundreds declaring that I ought to be at once discharged, and that I should not be harmed; when Colonel Townsend, of the 24th—who commanded in the absence of Sir Allan McNab—accompanied by his staff, rode up; and his eye kindled with savage fury as he sat in silence for a few minutes, gazing upon the scene before him. His own regiment, as well as the other forces, were in a state bordering on mutiny. When he was first observed, the confused noise and murmur of many voices was hushed for a minute or so; but it soon commenced again, and "he shan't be hurt," was uttered by many a resolute soldier, in defiance of the savage looks of his commander. "Silence!" at last burst forth from his quivering lips like thunder. "Is this her Majesty's 24th? Is this their loyalty to their sovereign? I would never have believed that my regiment could, under any circumstances, behave thus. Shame! shame, my men! Remember your oaths, and your duty to your sovereign." Turning to me he vented his spleen and rage, in a

speech intended, no doubt, less for my ears than those of his own men.

“So, sir, we have got you at last, you d—— rebel sympathiser. I congratulate the country upon your capture. You are the most valuable prisoner ever yet taken by our forces, and, by ——, we’ll make sure work of you! I will try you to-morrow morning at break of day on a drum-head court martial, and ere the sun rises again, you shall be shot.” A voice from one of the lancers: “You shall shoot me first.” A dozen voices from the crowd: “He sha’n’t die, by ——!” The orator again shouted, —“Silence! Shame! men — shame!”

Taking advantage of the temporary silence, I spoke as follows: “Col. Townsend, this torrent of abuse comes with an ill grace from a man in your station. Had we met upon equal terms, you had not dared thus to insult me. Captive though I am, my spirit is free as my native air, and I scorn your abuse, as I defy your malice and rage. Death has no terrors to me; and life, through the events of this day, has become valueless. It is better to die, than live under the lash of tyrants; so ——.”

The Colonel interrupted me. —“Silence, scoundrel! — another word and you shall be gagged. The other prisoners whom we have taken, are innocent compared with you. It is such d—— scoundrels as you who have incited them to rebellion, and kept the country in a constant state of alarm for months. You richly deserve the worst death which ——.” A lancer: “General, he saved our lives.” “Silence! — interrupt me again and I’ll punish you. — Your motives for interfering in the affairs of the country are plunder of its peaceful inhabitants. There stands a man (pointing to Overholt) whom your party robbed of a thousand dollars.”

“General, he’s no robber; he made the scoundrel, Beemer, give us back our money and property,” said a lancer.

“Silence! can I not be obeyed? — Your case is a most aggravated one, — there is not a single point in your favor. You have no property and no interest in this country; and, consequently, no business in Canada. You deserve to have

your brains blown out immediately, and your captors ought to have shot you at once, instead of bringing you here; but their mercy shall not avail you anything; so prepare to die to-morrow morning at sunrise—for die you shall, by ——!”

“General, he saved our lives, at the risk of his own, and he shall not die!” shouted several voices in one breath.

“Have you any request to make before you are taken to the cells? for to-morrow morning you die! Any message to your friends shall be sent, although you don’t deserve even that favor.”

“My friends and countrymen will save you the trouble of carrying them any dying message from me; for they will come here to avenge my death, and you will do well to be prepared to receive them. One favor, however, I crave, though I am sorry to ask it of a tyrant. A Testament was taken from me by my captors,—I would have that returned, and, also, be left alone until my hour has come. You will find me ready, whenever it suits your convenience.”

“Ha! ha! ha! the d—— Yankee is frightened to die, after all, and wants to pray. Ha! ha!—give him a Bible; he needs it bad enough. If there is a Hell, he will get his share of it, with all other rebels; ha! ha! ha!” Turning to an officer of the 24th, he said, “Take your company, put heavy irons and hand-cuffs on him, and guard him to the cells, and if any attempt is made to rescue him, blow his brains out first, and then fire upon the mutineers.”

I had been sitting all this time in the wagon in which I had rode from St. Catharines, with my arms still tied behind. When the Colonel ordered me to be ironed, one of the lancers appeared to notice for the first time that I was pinioned. He instantly sprang into the wagon and tearing the ropes from my arms, shouted, “Colonel, he saved our lives; took off the ropes with which we were bound, and set us free; and he shan’t be ironed, nor bound in any way, by ——! You shall shoot me first.”

A murmur of approbation arose from the crowd, and many voices shouted, “that’s right; we’ll stand by you,” when the Colonel exclaimed: “Take him away,—away with him at

once. Never mind the irons,—away to the cell with him, or, by ——, we shall have the whole army in a mutiny.”

A company of the 26th took me in charge, and, after shaking hands with my good friends, the lancers, who told me not to fear,—“for,” said they, “he dare not hurt a hair of your head—his own regiment would not stand it,”—I marched, unfettered, about sixty yards to the guard-house. The door of a cell in the basement story was opened, and I walked in. There was no bedding; nothing but an iron bedstead and a piggin of water. A loaf of bread was shoved into my new apartment, which, in honest indignation, I kicked with my foot until it was in a thousand pieces, and then kicked over the piggin of water.

The door was closed and bolted; and, for the first time in my life, I heard the key turned upon me, and felt myself a *captive!*

CHAPTER VI.

The Captives.—The First Night in Prison.—The Examination.—The Magistrates.

“WHO are you?”—a voice which I knew to be Colonel Morrow’s, inquired, from an adjoining cell, the moment the keeper retired.

“What, Colonel, have I got you for a neighbor in this horrid hole? I was in hopes you had escaped—I call myself a Patriot; others call me Miller; but Colonel Townsend, with whom I have just had a very pleasant interview, dignifies me with sundry other appellations, such as rebel, sympathiser, scoundrel, robber, brigand, and a host of tender epithets, too numerous to mention. But when did you arrive?”

“Last evening, escorted by a guard of sixteen rag-tag and bob-tail volunteers. Townsend was as polite to me as to yourself. There was nothing in his vocabulary of scurrility half bad enough for me. If there is any dependence to be placed upon what he says, we are all doomed men.”

“Whom have we for companions, Colonel?”

“Most of our party, I am sorry to say, are taken. Major Wait and your friend Deal are among the captured. The men generally bear their ill fortune well; but some are selling the lives of their comrades to save their own necks—Seymour and Doan are the principal traitors. Our old friend Kemp, of the Short Hills, is in an adjoining cell, blubbing about his wife, cursing the British bitterly, and threatening to take the lives of the traitors, or of any man in the party who shall say a word to implicate him in any manner, or even pretend to know him in the presence of the authorities; but, hist! did you not hear footsteps in the passage? Our enemies are listening, and if we are not cautious, we shall cut each other's throats.”

Putting my ear to a crevice in the door, I distinctly heard low whispers and light footsteps in the passage. *Eaves-droppers* were in attendance, and our conversation ended for the evening.

As this was the first night I had ever spent in prison, and, as I had an assurance from the tyrant Townsend, that it was my last on earth—although, in truth, I much doubted whether he would execute his threats—my reflections were not of the most agreeable nature. I confess I felt sad, and pained at heart. It was not so much on my own account that I sorrowed, but there were others, alas! whose kind and sympathising hearts would break through my misfortunes. Parents, brothers, sisters, and all whom I most loved, would be stricken to the earth by this, to them, dreadful affliction. The thought was agony. Could I have borne all myself, I should have been comparatively happy; but no, they must suffer. I could not rob a mother of her deep affection for a child—I could not turn a father's heart to stone, that he should not feel for a son—I could not blot out my image, which was graven upon the tablet of a brother's or a sister's heart—else had I, in the bitterness of that dark hour, done so. Imagination, assisted by memory, called up that peaceful and happy fireside; and the sweet scenes of childhood and youth, flitted before me. There were those I loved; quietude and peace reigning within

their little circle, and the angel of mercy smiling upon and guarding their habitation. They dream not of the dark cloud fast gathering over their heads ; but, quick comes the messenger of evil tidings, and then the agonizing shriek ; the stricken, senseless form, of that kind, affectionate mother—the groans of that venerable father—the tears and sighs of a doting brother and sisters, and the accusing voice, “*Thou* art the cause of this woe !” Dark and gloomy as was my cell, I involuntarily pressed my hands over my eyes, to shut out the dreadful vision.

Then came my own evil destiny, frowning upon my dark and gloomy soul. Where were now the bright visions and youthful hopes that had lured me on to destruction ? All had vanished in a single day ! Earthly hopes and expectations blasted—annihilated ! Death wore a smile upon his grim countenance, and the grave seemed the only refuge left. Yet, while the desires and feelings incident to frail human nature, especially in the season of youth, were thus suddenly crushed and destroyed, think not, O reader, that the sorrowing captive had no hope, no consolation, to cheer his desolate heart—no honey to mingle with the gall of his bitter cup. The cause in which he had lost so much, through the events of a day, was not the less just and righteous, nor did he love it less than before. He believed that Canada would yet be free ; and although it might cost his own, and the blood of thousands, the price was not too great to pay for a nation’s birth. He felt that he had walked in the path of duty ; and, that He, in whom he had hitherto trusted, would not withdraw his gracious support in the trying hour.

Reader ! with such feelings I knelt down in my damp, cheerless cell, to hold communion with the Eternal One, and a “still, small voice,” whispered to my aching heart, “Fear not, for I am with thee, be not dismayed, for I am thy God.” Stretching my weary limbs upon the damp stone floor, I slept sweetly and soundly. Earth had no sorrows too great for Heaven and sleep to soothe and heal.

When I awoke in the morning, my limbs stiff and chilly, with the cold damp, and the gloomy walls of my cell met my

bewildered sight, bringing home the stern realities of my situation to my heart, I felt a sweet peace within, of which captivity, and the malice of my enemies, had no power to rob me ; and, I required no other support, to enable me to abide the decrees of fate. Sunrise passed without the threatened court-martial and death. Had the tyrant really intended to carry out his sanguinary threat, the disposition which his troops so openly and resolutely manifested upon the subject, would probably have deterred him. I learned that, after my removal to the cells, the previous evening, he harangued his troops for half an hour, on the enormity of their conduct, in manifesting sympathy for a "d—— Yankee ;" and threatened to punish the lancers, or others, if they should dare to again say any thing in my favor.

At 9 o'clock, my cell door was thrown open, and I was ordered out. I was soon joined by about forty others, who were confined in the same guard-house ; among whom were Colonel Morrow, Major Wait, Mr. Kemp, and my friend Deal. We met as strangers ; and our enemies, who were on the watch, could have detected nothing in the looks, or manners of any one, to justify an opinion, that we had ever seen each other before. I looked at all of our little party, but, whenever their eyes met my own, I could scarcely refrain from smiling, at the repulsive scowl, which seemed to say very plainly,—“Please to look the other way ; I neither know you nor wish to.” They were all heavily ironed, which inconvenience I had escaped, through the interference of the lancers. The sergeant, who had us in charge, soon hand-cuffed us in pairs. Poor Deal crowded up to my side while the coupling was going on, and we were forthwith united. “That’s a little too tight,” said he, wringing his hand in agony, when the key was turned,—but he only got a savage look for his complaint.

We were marched, under a strong escort, about 300 yards, to a hotel, where a bench of magistrates was sitting, for the purpose of making out warrants of commitment to jail. On the way, Deal got a chance to whisper in my ear,—“My name is not David Deal, but William Reynolds. They’ll

hang me, *lynch fashion*, if they find out I was with Bill Johnson, at the burning of the Peel."

Most of the party were called before me, and I observed, when they came out, that their countenances wore marks of honest indignation, indicating that something was going on within, rather unpalatable. At length my turn came; the hand-cuffs were taken off, and I was ushered into a room, occupied by three magistrates, two clerks, half a dozen armed soldiers, the traitors Doan and Seymour, and two of the lancers.

Two of the magistrates were elderly, respectable-looking gentlemen; but the third was a young, green-looking fellow evidently full of a sense of his own importance, with but little wit, and less judgment, and in every respect unfit to perform the stern duties in which he was engaged. Without any reference to his seniors he commenced with,—

"Well, what have you got to say for yourself?"

"That depends altogether upon what *you* have to say; as yet I see no occasion for saying any thing."

"Your present circumstances appear to have sharpened your wits; but I had forgotten; you are a lawyer; gentlemen, we must proceed in due form,—he! he! he!"

"My profession is a matter of perfect indifference; my misfortunes are, possibly, less serious than you would insinuate.

"Be they light, or heavy, you are charged with a very serious and heinous crime, for which, if convicted, you must answer with your life; and of your conviction there can be no doubt. You can make any statement you choose, which will be taken down in writing, and read as evidence on your trial. I give you this caution that you may not, unguardedly, say any thing to commit yourself."

"You are very kind! but, as the simple truth will answer my purpose, your hint will be lost upon me."

"D—— your impertinence, sir; how dare you answer me, a magistrate of Great Britain, in this manner?"

"I am quite sensible of your importance, though your magnitude may appear somewhat less to me, than to your-

self. As for impertinence, the charge comes with an ill grace from your worship."

"By heavens! I'll have you punished!"

"I am punished already."

"How?"

"By being subject to the caprice of a magistrate who is unfit for his business."

"You d—— Yankee blackguard!"

"Thank you, sir, for your compliments."

"Were you at St. Johns, on the morning of the 21st of June, villain?"

"Did you speak to me?"

"Yes, and expect a prompt answer; were you there or not?"

"Who pretends that I was?"

"You are charged with being there, for which you deserve to be hung!"

"Shot, sir, if I may be allowed to have any voice in an affair of so little importance. But who charges me with being there?"

"There stand your accusers," pointing to the lancers, and traitors.

"If they make the charge, let them prove it."

"Do you dare to deny it?"

"Yes."

"Say 'yes sir,' you scoundrel! am I to be insulted in this way?"

"Apply the epithet scoundrel to your equals; it sounds harsh to the ears of an honest man."

Here the fellow sprang from his chair, and in the vehemence of his passion gave vent to shameful oaths and imprecations, unfit to be heard, much more to be read. The other magistrates sat with averted faces, laughing heartily, during the foregoing scene. The senior now interfered, and severely reprimanded the young *spalpeen*, telling him he had received proper answers to all his questions. Taking the business into his own hands it was soon dispatched; a few questions were asked of the witnesses, and

I made a statement which was taken down by the clerk verbatim, in which, I told the truth, although, I must confess, not the whole truth ; as, had I done so, my case would have been hopeless indeed. I was required to sign it, and the magistrate witnessed the signature. The senior magistrate, then, and on my trial, proved himself my friend. He was an excellent man, and there are many such in Canada. On returning to the guard-house, Deal, or William Reynolds, as we shall call him in future, asked to be put in the same cell with myself. This was granted, and we passed such a night, as captives are wont to endure ; and thus ended the second day of BONDS.

CHAPTER VII.

Removal to Niagara.—Reflections.—Lundy's Lane.—Morrow's Toast.—The Jail.—Friends of the Prisoners.—Filial Affection, &c.—Removal to Toronto.—Treatment.—The Fourth of July.—False Alarms, &c.—Sir George Arthur.—Return to Niagara.—Special Sessions.—Trial of the boy, Cooly.—The Indictment.—The Corrupt Court.

EARLY the next morning, the prisoners were removed to Niagara jail, heavily ironed, and escorted by a company of cavalry. I was hand-cuffed, and my legs tied with a cord ; thanks to the lancers, who still resented any indignity, or unnecessary severity imposed upon me. My reflections upon leaving the vicinity of the Falls and Lundy's Lane, as I supposed, forever, were somewhat melancholy. I had spent some pleasant days here, a few weeks previous, feasting my soul upon the sublimity and magnificence of the mighty cataraet, and wandering over the battle-ground, consecrated by deeds of heroism and the blood of brave men. The probability of my spirit's soon joining those of my countrymen, whose bones lay mouldering in the mounds I had visited, recalled to my mind my last visit to Lundy's Lane. A Canadian, who fought on the bloody night, under the colors of the enemy, accompanied me, and pointed out the ground upon which the principal

charges and most sanguinary conflicts took place ; the mounds where the dead of both parties were buried ; giving also a minute detail of the movements of the two armies during the action ; after which he left me to my own reflections.

Evening found me still rambling over the ground, as if a spell bound me there. The roar of the not distant cataract, with its rushing waters, was unheeded, amid the feelings which the locality called forth. They were new to me, for I understood not before, that the human heart was susceptible of such emotions. Imagination called up the bones of the slain, clothed them with flesh, inspired them with life, courage, and military ardor, and enacted over again the scenes of that bloody night. The roar of the cannon, the shouts of the opposing hosts, the clash of bayonets, the streaming wounds, the pools of blood, the groans of the dying, and the mangled dead, all passed before me. I saw not the fierce and deadly passions, which, too often, fire the hearts of the opposing hosts in battle. Patriotism and personal bravery were sufficient to account for every valorous deed, and every noble sacrifice of life. Whether such feelings as I experienced were acceptable to the Almighty, I know not. Perhaps they were not. The spirit which animated the breasts of the dead, when they here yielded up their lives upon the altar of their country, was stirring within my own, and thrilling my whole frame. I knelt upon their graves, and prayed for myself, and for Canada ; that final success might crown the efforts of her sons, to emancipate her from British thralldom ; and that I might be imbued with wisdom and strength to act my humble part, faithfully and devotedly : and, there upon my knees, I dedicated myself to the cause, for life or for death, as Heaven might will.

As I took a farewell look of this sublime and sacred scenery, it seemed that my prayer of that night was soon to be, in part, answered ; and the pledge which I there made of my life required at my hands. There was no bitterness in the thought ; no regret that I had joined my fate with the struggling Canadians ; for conscience told me I had done my duty, fearlessly and faithfully. It was enough that I had this consolation. It was enough that I could look, in humble confi-

dence and faith, to a happier state of existence beyond the grave than I had found on earth, and that I dreaded not to enter upon the dark valley of the shadow of death. Still, however lightly I might prize life, however fearlessly I might look death in the face, there were others, whose sufferings on my account, would far exceed my own ; and, for their sake, I wished to live, and resolved not needlessly to die.

On our arrival at Queenston, Colonel Morrow, greatly to the mortification and rage of the officer who had us in charge, drank the following toast :

“The star spangled banner of liberty!—may it soon be unfurled again upon Queenston Heights, and every Tory in Canada be forced to do it homage !”

At Niagara we were unfettered, and turned into the jail. We occupied a hall during the day, and were locked into cells at night. We found Messrs. Chandler, Bradey, Brown, and others—nearly thirty in all—there, who had arrived before us. Poor Chandler seemed somewhat uneasy at the prospect of death. He had a numerous and interesting family resident at the Short Hills, who were, in a measure, dependent upon him; and their sufferings on his account seemed at times almost to unman him. His daughters attended at the jail constantly, and Miss S——, the eldest, was unwearied in her exertions to soothe her father’s fears and lighten his sorrows. What a noble sight it was to see that faithful and devoted daughter, hiding her own emotions, concealing aught that could add to the sorrows of her parent, and assuming cheerfulness and hope, which she did not feel, that he might not see the affliction he had caused. I have often watched her smiling and cheerful looks, while in the presence of her parent; but, alas! the moment his back was turned, tears of anguish would gush forth, and stream down her pale cheeks, speaking in language louder than words, her affection and devotion. Here, also, I saw for the first time, the excellent and truly estimable wife of Major Wait. Her great and unwearied exertions in her husband’s behalf, since then, have called forth the sympathies, and elicited the admiration of all who have become acquainted with her con-

duct. She was one of the most devoted and faithful of wives, and happy is that man who can boast of her equal.

The second day after our arrival at Niagara, we were removed to Toronto, in the steamer *Experiment*, there to stand our trials, as the sheriff informed us; but this was, doubtless not the real cause. The 4th of July was near, when an attack was expected from the Patriot forces, and it was natural for them to wish us in a place of security, as a rescue would probably be attempted. Our situation in the Toronto jail was exceedingly uncomfortable. Dirt and filth were the most prominent objects within the walls; but hunger was no stranger there, our daily rations being only twelve ounces of bread, and a pint of bullock's head soup. This last was so very filthy, that nothing but starvation could have enabled any christian to eat it. Upon its surface was never seen floating anything that resembled grease; but something which looked very much like the jaw-bone of an ass, was found one day in the bottom of the soup-bucket. Alas! there was no Samson present strong enough to slaughter a thousand of the Philistines with it. Had that sublime personage been rationed as we were, he would have lacked strength to perform his prodigious feats.

At night, Morrow, Chandler, Wait and Reynolds, were taken below to sleep in the ground cells. They were heavily ironed; those upon Morrow's limbs weighed sixty pounds. Reynolds suffered this, in consequence of a charge having been made by the traitors that he was engaged in the burning of the steamboat Sir Robert Peel. He was twice confronted with parties who were present during the *Caroline* tragedy, without being recognized; after which his heavy irons were knocked off, and he was permitted to sleep in the cell with me. Had he been recognized, nothing could have saved his life; so enraged were the Canadian authorities at the perpetrators of an outrage, which they had themselves sanctioned by their unjustifiable and wanton destruction of the American steamer *Caroline*.

On the evening of July 3d, an alarm was given, that the Patriots were coming to attack the town. Great prepara-

tions were made to receive them, if one could judge from the noise and confusion in the city. A strong guard surrounded the jail, to protect us, poor fellows, from insult and harm. Doubtless, it would have broken their hearts, had we been torn from their affectionate embraces by the murderous Patriots. It turned out to be a hoax, however, though it kept them in an outrageous uproar all night.

The morning of the "Glorious Fourth" at length dawned upon us. We had all looked forward to this day, with feelings of the deepest anxiety, hoping that a blow would be struck for Canadian liberty. Although I knew the late movement at the Short Hills must have greatly injured our intended rising, &c., &c., still, I clung to the hope that something, consonant with the preparations which I knew had been made, would be done towards effecting the great end for which we had been so long laboring, and the salvation of us poor prisoners. The day was a long and tedious one, and it was hard to spend this season, which from my earliest recollection had been one of joy and gladness, within the gloomy walls of a prison, with little, if any, hope of life for the space of another short month. My countrymen, and thousands of those who were bound by their solemn oaths not to desert a brother in the hour of peril, were celebrating the triumph of American liberty, while I was in prison, and Canada writhing under the lash of the oppressor. A succession of false alarms, which greatly frightened our enemies, and kept us in a state of intense excitement, closed the day. When the succeeding day had passed, and all remained quiet, our hearts sank within us, and we mourned as those who have no hope. Knowing, how long and anxiously our Canadian friends had looked forward to this anniversary of American independence, in the expectation that it would prove a glorious day for their own land, and one which, in future years, they could celebrate as their own, I feared this delay of our plans would dishearten them altogether. My faith in the final success of our cause, remained unchanged; but it was melancholy to reflect, that the sun of my life must set, ere the star of Canadian liberty

should rise to shed one ray of its cheering light upon my soul. I felt, that could I only see the standard raised, and our hosts rallying round it, I could die in peace; but it would be very hard to suffer upon the scaffold, and close my eyes forever upon earth, till then.

His Excellency, Sir George Arthur, and suite, visited the jail while we were there, and evinced a determination to be severe. I think he observed, that hanging was too good for us. On leaving, he advised us to make our peace with Heaven, as our time on earth was short. He was, I should judge, about fifty years of age, in stature rather below mediocrity, round shouldered, his head gray and somewhat bald, visage long, eyes small and piercing, and the general expression of his countenance perfectly passionless. If he had feelings, they were hidden by his exterior. No physiognomist, in studying his face and features, would accuse him of possessing a heart. But there was a compression about his lips, which strikingly evinced his great perseverance, determination, promptitude, and decision of character. These qualities he possesses in an eminent degree; and probably no person could have been found in the British dominions, so well calculated to stand at the helm of British interests in Canada, during those trying times. Great Britain, is indebted to him for the preservation of the Canadas as dependencies of the crown.

On the 14th July, we were taken back to Niagara. to stand our trials. We were between sixty and seventy in number, yet, many of the party had taken no part in our affairs, but were thrown into jail at the instigation of their Tory neighbors. The grand jury were called together, and "true bills" were forthwith found against those whom the government had selected for the scaffold. A special session of the court was convened for the express purpose, and not a moment's unnecessary delay took place in the ominous preparations. The Tories thirsted for blood. The affair of the Short Hills was certainly an outrage upon the British government; at least, Britons would deem it so; still, as no lives had been actually taken by our party, there was no

excuse for this feeling ; but if nothing short of blood would satisfy them, they should have taken care that the most guilty suffered.

Beemer, the chief agent in the tragedy, was a British subject, of their own raising ; and not one of my countrymen took any part in the robbery, &c. It afterwards appeared, from the correspondence on Canadian affairs, ordered to be printed, by the imperial House of Commons in February, 1839, in a letter from the Solicitor General of Upper Canada, W. H. Draper, to the Lieut. Governor, and forwarded by him, with remarks, to the home government, having for its object the justification of that functionary, with reference to the execution of Colonel Morrow, that the provincial authorities determined to execute one of the party, as an example and warning to the disaffected on both sides of the lines. It was deemed expedient to select the one whose punishment would be most likely to produce salutary results ; and, in order to strike the greater terror into the ranks of the Patriots, and avoid the sympathy which would naturally be excited in behalf of the intended victim, it was resolved that the punishment should follow, as soon as possible, the commission of the crime. Hence the present court was called.

The law, under which it was determined to try the citizens of the United States, was an act passed by the Legislature of Upper Canada on the 12th day of January, 1838, providing for the trial of foreigners found in arms against her Majesty's government in the province, either by court-martial, or under the civil law, at the sessions of Oyer and Terminer, held in the district where the offence was committed. As yet, no American citizen had been tried under this act, in the civil courts; and, as there was a possibility that in the first case tried some flaw or irregularity in the indictment or other proceedings might occur, George B. Cooley, a mere lad, and extremely ignorant, was placed at the bar, merely for the purpose of testing the law and paving the way for a more important prisoner and doomed man to walk safely to the gallows. This poor youth was tried and found guilty; and, although I was informed by the first legal gentleman present

at his trial that it was irregular, and that he was undoubtedly entitled to an immediate discharge from custody, he was, in consequence of being friendless, sent with the others to Van Dieman's Land, where he still remained unpardoned in September, 1845.

After Cooley's trial, my own name was called, and I was hurried up stairs into a densely crowded court, and placed in the prisoner's box. Judge Jones, of Hamilton, presided. A jury were in attendance; the Attorney and Solicitor Generals, were in their places, and several legal gentlemen in their professional gowns. All eyes were turned upon me, when the clerk of the court arose and read my indictment;* after which the Solicitor General demanded,—

“Linus Wilson Miller, what say you—guilty or not guilty?”

* A certified copy of the indictment was afterwards obtained from the government by my legal friends in London, and was as follows:

“UPPER CANADA, *District of Niagara, to wit:*

“The jurors of our Lady, the Queen, upon their oaths present: That *Linus Wilson Miller*, late of the township of Pelham, in the district of Niagara, gentleman, after the 12th day of January, which was in the first year of the reign of our said Lady, VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the Faith; that is to say, on the twenty-first day of June, in the second year of the reign of our said Lady, the Queen, with force and arms at the township of Pelham aforesaid in the district aforesaid, being a citizen of a foreign State at peace with the United Kingdom of Great Britain and Ireland, that is to say, of the United States of America, having before that time joined himself to divers subjects of our said Lady the Queen, which said subjects were then and there, to wit., on the same twenty-first day of June in the second year of the reign aforesaid, at the township aforesaid in the district aforesaid, unlawfully and traitorously in arms against our said Sovereign Lady, the Queen, unlawfully and feloniously did commit an act of hostility within this province; that is to say, that the said *Linus Wilson Miller* afterwards, to wit., on the same day and year last aforesaid, at the township aforesaid, in the district aforesaid, together with divers others evil disposed persons, as well citizens of the said United States of America as subjects of our said Lady the Queen whose names are to the jurors aforesaid unknown, armed and arrayed in a warlike manner, being then and there unlawfully assembled together against our said Lady the Queen, feloniously did levy and make war against our said sovereign Lady the Queen, and feloniously did assault and attack certain of her Majesty's forces in the peace of our said Lady the Queen then and there being, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.— And the jurors aforesaid, upon their oaths aforesaid, do further present that the said *Linus Wilson Miller* after the twelfth day of January, which was in the first year of the reign of our said Lady the Queen, to wit., on the same twenty-first of June in the second year of the reign aforesaid of our Lady the Queen, being a citi-

Now, reader, thy humble servant is constituted like most other men, and, although life had become valueless, and death had lost its sting, since it would deliver him from the hands of his enemies, he did not exactly choose to be kicked out of the world by a combination of British aristocrats. One likes to make his exit from the great stage of life after the fashion of old patriarch Jacob, who "gathered up his feet into bed and yielded up the ghost, and was gathered unto his fathers,"—a very different and far more preferable process than that of kicking the air in ones last moments, and then being gathered up by the doctors. But if so unfortunate as to take his departure after such fashion, it is quite bad enough if the thing is done decently and in order; undue haste, in a matter of such serious importance, is unbecoming, and always renders a journey uncomfortable. A rich miser being ill of a dangerous malady, made his will, which he caused to be sealed up until after his demise, and then resigned himself to his fate; but his *heirs expectant* gathered round him, manifesting much anxiety for the expedition of business. The undertaker, sexton and bellman were all sent for, and ordered to hold themselves in readiness to perform their respective offices. Loud were the lamentations of the sorrowing friends as the breath of the dying

zen of a foreign State at peace with the United Kingdom of Great Britain and Ireland, that is to say, of the United States of America, with force and arms at the township of Pelham aforesaid, in the district of Niagara aforesaid, having joined himself to divers subjects of our said Lady the Queen, which said subjects were then and there, to wit, on the same day and year last aforesaid at the township aforesaid in the district aforesaid, unlawfully and traitorously in arms against our said Lady the Queen, was unlawfully and feloniously in arms against our said Lady the Queen within this province, and did continue unlawfully and feloniously in arms within this province against our said Lady the Queen for a long space of time, after the said twenty-first day of June, to wit, until the twenty-fifth day of June, at the township of Pelham aforesaid, in the district aforesaid, contrary to the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

"All and singular which premises by the tenor of the presents we have commanded to be exemplified in testimony whereof we have caused our seal appointed for sealing writs in our Bench aforesaid, to be affixed to these presents. Witness, the Honorable PETER SHERWOOD, Senior, Judge at Toronto, this 18th day of July, in the year of our Lord one thousand eight hundred and thirty-eight, and in the second year of our reign.

(Signed.) W. H. DRAPER, Solicitor General.

(Signed.) CHARLES C. SMALL, Clerk of the Crown & Pleas.

man grew shorter and fainter. "Take that pillow from underneath his head," said one, "he will die easier."—"Poor man!" said another, "the sooner it is all over, the sooner he will be out of pain." "He is so far gone," chimed in a third, "that a wet cloth," spread over his mouth and face will do no harm." "Ah! yes," they all exclaimed, "bring a wet cloth." Here the undertaker stepped up to take the necessary measure, and the bell of the village church began its solemn and death-like *tong!—tong!—tong!*—but the sound caught the ear of the dying man. He opened his eyes, raised his head, and to the great disappointment and dismay of the weeping group, exclaimed,—“What’s all this fuss about? A wet cloth; ah! and you here, too, Mr. Undertaker? Get out of my house, rascal! I’ll send for you when I want you. Weeping friends, you may as well go home and stop the tolling of that bell. I did think seriously of dying if the Lord willed, but I have altered my calculations, and I’ll not die now any how. I want to count over my money again, and that will, too, requires altering;” and he counted his gold for many a year after, much to the annoyance of his tender-hearted friends.

Now, when I heard my name called by the sherif for trial, I knew well (from having been informed by a friend that only one trial, except that of Cooley, was to take place at the present court) that I was selected as a victim, and that the kind offices of “*Jack Ketch*” were bespoken for my especial favor; and when placed at the bar, and saw myself surrounded by enemies, who manifested in all the usual preliminaries an inordinate thirst for my blood, I felt indignant that these humane and benevolent gentlemen should take so much interest in hastening my end, and resolved, like the miser, that die I would not—if I could avoid it—just to spite them, if nothing more; and here the little knowledge of English law which I had acquired by my profession came to my aid. When, therefore, the aforesaid question was put to me, I answered promptly and without hesitation:

“I shall not plead to my indictment at present.”

Solicitor General.—“But you must.”

"I choose to be excused."

Solicitor General.—"But you can not be excused."

"I tell you I am not prepared to stand my trial now."

Chief Justice.—"Answer you, prisoner at the bar, the question put to you by the court. What say you, Linus Wilson Miller, guilty, or not guilty?"

"My lord, that is a question which, as I before said, I am not now prepared to answer."

Chief Justice.—"You *must* say guilty or not guilty."

"Your lordship *must* excuse me."

Chief Justice.—"You *shall* answer either guilty or not guilty; it is only mere matter of form."

"Doubtless your lordship considers hanging by one's neck until dead only mere matter of form."

Chief Justice, in a rage.—"Do you mean, sir, to insult this court?"

"My lord, I mean only what I say, that I must have time to prepare for my trial."

Chief Justice.—"Will you, or will you not, plead to your indictment? What say you, prisoner at the bar, guilty or not guilty?"

"My lord, I cannot plead now."

Chief Justice.—"You shall, by ——!"

"My lord, I *will not!*" (great sensation.)

The Attorney General.—"How dare you insult his lordship? You must answer at once; it will be better for you to do so. I advise you to plead not guilty; after which the court will take into consideration your claims to have your trial postponed, and order you counsel if you wish it. The court are disposed to be just and merciful."

"I repeat what I said before, I *will not!*"

Attorney General.—"You are a desperate fellow."

"And not without reason; for, if I am to judge of the intentions of the court, from external appearances, I am in desperate circumstances. But the word 'fellow,' which you just now applied to me, is significant."

Attorney General, with a sneer.—"Pray sir, what are you?"

“A victim chosen for the slaughter; but you are mistaken if you think to coax or drive me to plead at present; I understand your wishes and my own interests too well.

Chief Justice.—“Prisoner at the bar, three weeks have passed since your capture, and you have had sufficient time to prepare your defense. This court has been convened for the express purpose of trying you, and the government can not be put to so much expense for nothing. I have taken care, myself, that all the witnesses which you can possibly require in your defense, should be present to-day, and they are here. You can have, therefore, no excuse whatever for wishing to postpone your trial; and your only object is, to give the government and this court unnecessary trouble; but your stubbornness shall avail you nothing, for the court will order the usual course in case of stubborn and wilful prisoners, who refuse to plead, to be pursued in this case. I now ask you for the last time—what say you, Linus Wilson Miller, to the charges preferred against you; are you guilty or not guilty?”

“My lord, I am informed by your lordship that I have had sufficient time to prepare for my trial, having been in custody three weeks. How was I to prepare my defense before I had been indicted—how know what charges, if any, would be preferred against me? I have but now heard them read, and am required, without one moment's warning, to plead to charges of the most serious nature, affecting my life! I am likewise informed by your lordship, that all the witnesses requisite for my defense, are present in court, by your lordship's express orders! Is it possible, that in the present enlightened age, a Judge, in a British court of justice, will tell a prisoner, arraigned under such circumstances, that the witnesses for his defense are all present, by order of the court, and that, too, in the presence of a jury empaneled to try him! Is a Chief Justice of a British court thus to sit upon a bench, and pre-judge a case of life and death? Have I consulted your lordship upon my defense? Have I consulted any legal gentleman in this province upon my case, whereby by any possibility your lordship could have been

apprised of the witnesses I may require, or of the nature of the defense which in so serious a case I may deem it necessary to make? How long have I known that charges were preferred against me, which require either a defense or the surrender of life without a struggle? And yet I am told by your lordship that I *shall* abide my trial, upon the testimony of witnesses of your lordship's own choosing, in a defense pre-determined by your lordship long before a grand jury had found a bill against me. Is this your boasted British justice? Am I indeed within the sacred walls of a court, a British court, the pride and boast of Englishmen? Shame, my l—"

Chief Justice, in a great rage.—"Silence, you d—— Yankee rebel! not another word, or ——."

"My lord, I will not keep silence when my life is at stake. Am I to be smuggled out of the world? Am I to be taken into a court of justice at one door, and the next moment kicked out at the other upon the platform of a gallows?—Your lordship tells me that this court has been convened for thee xpress purpose of trying *me*. I knew it before I heard it from your lordship's lips. I understood well, when my name was called for trial, that I was already doomed to the scaffold; that I was to be offered a sacrifice to blood-thirsty enemies; and that my life was to atone for the crimes of your own subjects. And why? Let your lordship answer. Let the inhuman cry which has been raised throughout the whole length and breadth of Canada by your Tories, for the blood of American citizens, answer! I am an American citizen, and therefore am I led to the slaughter. Was Jacob Beemer, the leader of the Short Hills party, an American, that I should answer for his crimes? My lord, since your lordship is determined to shed my blood, I am ready to yield up my life in the cause of liberty. I fear not death—I fear not the scaffold,—I am ready to ascend it even now; but if I am to be murdered, it shall not be cloaked up with a mock trial. Either hang me at once, without the shadow of a trial, or grant me a fair one. If I have forfeited my life according to the laws of England, and you can convict me in an impartial trial, conducted according to the principles

of English law, I will never utter a murmur, or sue for mercy. According to your boasted laws, a man is supposed to be innocent, until declared guilty by a competent and impartial jury; but I have been called a d—— rebel by your lordship, in the presence of a jury empaneled to try me! A jury, did I say? They are all strangers to me, but, from the proceedings I have witnessed here to-day, I have no doubt they are mere tools of the government, pledged to render a verdict of guilty, and perjured in their hearts."

A juryman from the box.—"My lord, are we, honest men, to be insulted and abused in this manner?"

"No doubt the gentleman is an honest man. Every man engaged in this nefarious transaction must needs be truly honest and honorable. But I thank God, that the gentleman's honesty is not likely to be put to the test, in a matter of life and death with me, to-day. I thank God for the little knowledge I have of English law, which enables me to defy this court to move another step in this trial, until the full time has expired which the law so humanely provides for a prisoner capitally charged, to prepare for his defense. I have been repeatedly told by your lordship and others, that I *shall* now stand my trial; but your lordship dare not enforce it. So gross a violation of law can not be cloaked up; and your lordship well knows that in case I was executed under a conviction thus obtained, it would be nothing less than a cold-blooded murder, for which your lordship would be liable to impeachment.

"My lord, I have done;—but I again *demand* from your lordship the full time allowed by law for my defense."

Chief Justice.—"Will you be prepared for trial in three days? The court will allow you that time, but no more."

"My lord, I am allowed seven full days after the finding of the indictment, before I am required to plead to the charges it sets forth. At the end of seven days, I shall be prepared to state what witnesses I require from a distance, to procure which I will have the full time allowed by law, for it is not only my right, but absolutely necessary to my defense."

Chief Justice.—“The court are under no obligation to grant you time to procure absent witnesses, unless you can show a *bona fide* defense which requires them.”

“It will be time enough to show that at the end of seven days. At present I have only to request to be furnished with a copy of my indictment.”

Chief Justice.—“The court will not allow you a copy.”

“I shall take an exception to your lordship’s refusal to grant a copy. Will the court please to make a note of that point, as it is an important one to me.”

Here a short consultation took place between the Chief Justice and the Attorney and Solicitor General, after which, the two last named gentlemen, came to the bar where I stood, and tried, for nearly half an hour, to prevail upon me to stand my trial at once. It would be for my interest to do so, &c., &c. The other legal gentlemen present, and more than thirty others—spectators—followed them in turn; but I had one answer for all, which was, “*I will not do it.*” There happened to be one honest man among the number, who whispered, “That’s right; stick to it, my lad, as you value your life; for they are determined to hang you!”

“I understand their wishes, and shall disappoint them,” I whispered in return.

Chief Justice, to the Attorney General, and others, in a low voice.—“Well, gentlemen, have you succeeded?”

Attorney General.—“My lord, he remains as stubborn as at the first.”

Chief Justice, to the deputy sheriff in attendance.—“Take the d—— Yankee lawyer away,—away with him at once, and bring up Morrow in his stead; we’ll see if we can manage him any better. But, by no means, allow them to speak together,” he added.

I looked around among the spectators, and saw many an honest countenance glowing with satisfaction at my escape—but the court and others looked like hungry men who had been cheated out of their dinners. Poor Morrow was hurried up, while I was almost kicked down stairs and turned in with my companions, some of whom gave three cheers when

informed that I had beaten them ; and, courteous reader, I felt proud in my heart, that I had been enabled to cheat three parties in one day, namely, the gallows, the Devil, and the British.

CHAPTER VIII.

Trial and Sentence of Colonel James Morrow.—The Condemned Cell.—Some Particulars of his Life.—Visits of the Canadian Clergymen.—Preparation for Death.—The Consolations of Religion.—He prays for his Enemies.—His Dying Message delivered to the Tory Clergymen.—The Catholics.—The Parting Charge. The Execution.

HAD I suspected, when required to plead to my indictment, that in case I defeated the evil intentions of my enemies with regard to myself, my brave and generous friend, Colonel Morrow, would take my place, not only at the bar of that disgraceful tribunal, but on the scaffold, I should most certainly have stood my trial and yielded up my life without a struggle. Could I have conversed with him, but for a moment, before he entered those fatal doors, he might have been saved; but the wily Judge took care that I should not do so. He was, therefore, placed at the bar without knowing his right to a postponement of his trial. Surrounded by blood-thirsty enemies, and without one friend to advise him, he obeyed the mandate of the corrupt court—went through with a shameful farce, a solemn mockery—heard a verdict of “guilty” rendered by a packed jury—was asked what he had to say why sentence of death should not be pronounced against him, according to law—listened to an insulting address from the Judge, who charged him to prepare for death as there could be no hope of mercy in his case—and then came the climax to that day’s work: “*The sentence of the court is, that you, James Morrow, be taken to the jail from whence you came, and from thence, on Monday, the thirtieth day of this present month, to the place of execution ; and between the hours of eleven and one, you be hanged by the neck until you are dead ;*

and may God have mercy on your soul!" After his sentence he requested of the court permission for me to occupy the condemned cell with him during the short time he had to live. The court consented, and we were, accordingly, locked up together. Never was it my lot to pass nine days so solemn, so interesting, and in some respects painful, as those. During our short acquaintance, he had become to me as a brother, and the last links in the chain of his existence bound our hearts still more closely together. He was about to suffer a death intended for myself; and which had still fallen to my lot, but for the insatiable thirst of our enemies, for blood, which would admit of no delay. These circumstances rendered my relation to him most melancholy, and I would have gladly exchanged places with him had it been possible. Besides, he had chosen me as the companion of his last moments, and looked to me for that feeble aid which, under the guidance and blessing of Heaven, a christian may render to a fellow-mortal, in a hasty preparation to appear before the bar of the GREAT JEHOVAH. This should have been a privilege not lightly prized, nor unproductive of deep humility of heart. To a believer in experimental religion, as taught in the inspired volume, such a responsibility would be fearful; and happy, thrice happy and blessed is he who is qualified to appreciate it correctly and perform his duty faithfully to one so near the gates of death, that upon the proper improvement of a few numbered hours hangs an eternity of bliss or woe. The better the christian the greater will be his humility, if thus used as an instrument by his Divine Master.

After the excitement occasioned by the events of the day had subsided, my friend related to me the history of his life, and his feelings and sentiments with reference to his present circumstances. He was of Irish descent; his friends were members of the Catholic church; was a native of Pennsylvania; had brothers and sisters living who were unacquainted with his misfortunes, and he wished them to remain so, for the present. His family were wealthy, and of the first respectability. He had been liberally educated, and had spent some years in traveling and amusements. In the pursuit of plea-

sure on our northern frontier he had become acquainted with the revolutionary struggles of the Canadians, and had joined them, as related in a preceding chapter. He had acted conscientiously in this matter, and only regretted that he had been of so little service in what he considered a righteous cause. He felt that it would be hard to die the death of a felon for having done his duty; but hoped his sufferings would prove a blessing to the cause of liberty in Canada. He had been tried and condemned by a corrupt tribunal of earth, but he should soon stand at the bar of a righteous Judge, whose laws he had often violated, but not with regard to the actions for which he was condemned to the scaffold.

His mind and heart were alike laid open to me without reserve. The former was a rich store-house of useful knowledge; the latter, a fount of noble and generous feelings, and of upright and honorable principles. But he was a stranger to the consolations of religion, which he now so much needed. In accordance with his wishes, our time was principally spent in devotional exercises, reading the scriptures, and conversation upon the leading principles of christianity. Clergymen of different denominations visited him occasionally, some of whom manifested not a little anxiety to convert him to their own peculiar tenets and doctrines on minor points; but he told them his time was too short and precious, to be wasted in discussions upon such matters; he only wanted them to point him to Christ, and pray with him for the pardon and forgiveness of his sins; and if they could not do this he hoped they would refrain from visiting him. One or two talked to him about the wickedness of his conduct, in attempting to establish republican institutions in Canada; to which he replied, that he wished his whole life had been spent in as good a cause; and when they proposed praying with him, he thanked them, and said he had no desire to hear men pray who could reproach him for one of the best actions of his life. He had no faith in the prayers of such men, but would pray himself that they might see their error and do as he had, but with better success.

For several days he appeared to be in deep mental dis-

tress. The grave, to which he was fast hastening, looked dark and dreary, and he felt that the Almighty was justly angry with him on account of his sins. He would sometimes say, "Can it be possible that such a sinner as I can find mercy? I have spent my whole life in the pursuit of pleasure, utterly regardless of the claims of the Savior of mankind to my affections and services, and now, when death is staring me in the face, can it be that He can forgive?" Some passages of scripture, such as the parable of the prodigal son, and the dying thief on the cross, gave him some encouragement to hope that, although it was the twelfth hour, his Heavenly Father might yet be reconciled to him, and his dying moments be cheered with the christian's triumphant hope.

On the evening of the 27th, he told me he could not close his eyes again until assured that his sins were pardoned, and accordingly spent the whole time, until midnight, in earnest prayer. It was an affecting sight to see that man upon his knees in the condemned cell, beseeching the Almighty to wash and cleanse his heart from sin, and prepare him for the solemn event which was so soon to take place.

Overcome, myself, with the anxiety and distress of mind which I had suffered, I threw myself upon our coarse and humble bed, and fell asleep. About 3 o'clock in the morning I awoke; and, reader, if thou art a sceptic, and doubtst the reality of the religion of Jesus Christ, thou shouldst have been in the cold, damp cell of the dying man, and thou wouldst have believed that "earth hath no sorrows that Heaven cannot heal." There was my friend, still upon his knees, as I had seen him three hours before, and I could perceive, by the dim light of our lamp, the tears streaming down his cheeks; (I had never seen him weep before,) but they were tears of joy, the overflowing of a grateful heart. His countenance was radiant with hope and bliss; it spoke of peace, and love, and joy, and Heaven; yea, Heaven had already dawned upon his soul. But I said he was still kneeling; yes, reader, James Morrow was engaged in prayer; but for what was he praying? what was the burthen of his

petition, think you? He was praying for his enemies. He was beseeching that Gracious Being who had just pardoned his own sins, to forgive the blood-thirsty men who had persecuted him unto death. He was praying that the same grace and mercy which he had experienced, might be extended to them. Then came the cause he still loved, though it had brought him to the gallows; then his distant brothers and sisters, for whom he implored the richest of heaven's blessings; then the betrothed of his heart, whose sweet image was engraved, as with an iron pen, upon the tablet of his affections; and oh! how earnestly did he commend that loved and worshipped one to the care and protection of his Heavenly Father; then, his fellow captives; and he prayed that the hearts of their enemies might be inclined to mercy; and lastly, while tears of joy and thankfulness streamed afresh from his eyes, he breathed forth the grateful acknowledgements of his heart, to Him whom he called *his Savior*, his Redeemer, for the great and marvelous mercies of that night, which had made the wilderness and the solitary way glad to him, and the desert of human woe and suffering, to "rejoice and blossom as the rose." Sorrow and sadness had fled forever, for death had lost its sting, and the grave its victory. And thus dost thou come in thy omnipotent power, O Religion, to rejoice the heart of the desolate captive, to cause the dying man to sing and shout for joy! Sorrow and sighing flee at thy approach, and thy heavenly countenance is radiant with joy and gladness. Thou art the balm of Gilead to man's wounded spirit; for when thou sheddest thy compassionate tear on his earthly woes they are blotted out forever. Thou art like the glorious morning sun; for when thou comest in thy power, resplendent in grace and mercy, night, dark and dreary night, is no more, and one eternal day commences, and a song of gratitude and praise which never ends.

As he had scarcely closed his eyes since his sentence, he now slept soundly for several hours; and no wonder, for his soul was at rest. Was it unmanly to weep for joy as I watched by his pillow? When he awoke in the morning,

all who saw him remarked the expression of his countenance, in which the consolations of religion were strikingly visible. Availing himself of the first opportunity, he called his fellow captives to the door of his cell, and after telling them of the change which had taken place in his feelings, exhorted them to an immediate attendance on the duties of religion. During the day, two clergymen of the established church visited him, and urged him to make all the reparation in his power for his great crimes by authorizing them to say to the world that he sincerely repented, and would caution others against following his example. With a look of heavenly meekness, yet of true dignity, he replied:

“I have a short message, which if you would take the trouble to have published to the world as the words of a dying man, I shall indeed be very thankful, and shall, I think, die happier, if I know it is made known to those who may have taken any interest in my fate.” They both expressed their readiness to serve him, and one of them hinted that it would be as well to make a clean breast of it by confessing all the principal sins of his life; and offered to procure writing materials to take down the particulars as he should relate them, but Morrow stopped him by saying there was no occasion for so much trouble, as his confession would be short; and continued, looking the while upon these wolves in sheep’s clothing, as if he clearly saw the deformity which they were covering with the cloak of religion: “My dying message to the world is, that I love the cause of liberty, for which I am about to suffer death, the better the nearer my end approaches; that my last days are spent in praying for its final triumph in Canada, and that I die in the full assurance of an eternity of bliss beyond the grave. Tell my enemies, amongst whom I fear I must rank you, gentlemen, that I freely forgive them the murder they are about to commit upon my body; and when they see their error, and are found fighting under the banner of liberty, my blood will be atoned for. This, gentlemen, is my dying message.” They both shrank out of the cell as if they

could not bear to look upon the image of the holy being whom they professed to serve.

Several clergymen called on Sunday, and not one of them could refrain from tears while he talked about that Heaven which on the morrow he should enter, where the wicked cease from troubling, and the weary are at rest.

The Catholics visited him from the first, and manifested so much sympathy and christian feeling that he resolved to receive the sacrament at their hands, although he did not believe in many of the doctrines and practices of their church. I can not refrain from adding, that the two priests who attended him appeared to me like humble and devoted servants of the meek and lowly Jesus. Is it not bigotry to believe that Catholics can not be good christians?

My friend slept soundly and, as he said, sweetly the last night of his earthly existence. Monday, the day of his execution, was a solemn and painful one to his fellow captives. There was not one in our little company who did not esteem and love him. About two hours before his death he gave me his dying charge, which was, if I should ever have it in my power to do so, to acquaint the world with the particulars of his unfortunate expedition, and his feelings with reference to it in his last days. This, reader, I have essayed to do in this and a preceding chapter. After he had taken a solemn farewell of our little company, I knelt with him for the last time in prayer, and heard him earnestly beseech Almighty God to bless the cause of Canadian liberty; to forgive his enemies, and to receive him into His heavenly kingdom. We arose, embraced for a moment, and parted. His last words to me were, "I die a martyr to a righteous cause, and I die happy. Death has no sting, for I shall soon wear a crown of glory."

A few minutes afterwards the sheriff came. The weeping captives formed in double rank from the cell through the hall; the cell door opened and sheriff Hamilton with a countenance ghastly and pale as death, walked in front; then came the two Catholic priests, reading the solemn service appointed for the occasion; and our beloved Colonel followed.

When he saw his weeping comrades, there was a slight groan and heave of his broad chest, but that was all. He waved his handkerchief as a final adieu, his fine, manly countenance was calm and serene, and it was evident to all who saw him that the everlasting arms of mercy were underneath and around him, and that though he was entering upon the dark valley of the shadow of death he feared no evil. He walked with a firm step through the hall, ascended the stairs which led to the scaffold, and was hidden from our sight forever. About two minutes of the most painful silence ensued, when we heard the *fatal drop!* and without a struggle Colonel JAMES MORROW passed from the gallows to Heaven! Reader, he was a MURDERED MAN.

CHAPTER IX.

Effects of Public Executions, &c.—Colonel Townsend's Outrage.—Sherif Hamilton.—*Jack Ketch*.—The Old Woman's Prophecy.—Dialogue with the Catholic Priest.—The Conscientious British Major.

IN less than a minute after the fall of the platform which consigned poor Morrow to eternity, Colonel Townsend, accompanied by half a dozen of his brother officers and Tories, rushed into the front hall and called in a loud voice for me. The cursed sound of the *drop*, which continued to ring in my ears for months afterwards, suddenly checked the feeling of grief and sorrow which I before felt for my friend, and filled my breast with emotions of such deadly hatred to his murderers as I never experienced before nor desire to again. In like manner were dried the tears of my companions, who had, with one or two exceptions, wept freely until that fatal moment. An unnatural or violent death always produces this effect. Man's constitution is such that his better feelings can not sympathise with pain wantonly inflicted upon a fellow creature. He may, it is true, feel pity for the party suffering, but indignation towards the author of it is a sensation more

intense and lasting. Hence it is that public executions are found to harden the hearts of the spectators, and rather prepare them for the commission of crime, than deter them by its consequences. Strange, that civilized and christian governments should sanction a practice so demoralizing.

In reply to the call of Townsend, I stood before him, and was thus addressed,—

“Did you hear that *drop*? How do you like it? You should have been in his place by right; but you don’t escape, by ——! It will be your turn next. Do you think you can stand the halter? ha! ha! ha!”

This climax of British cruelty was more than I could bear, with becoming dignity, and I shouted in reply,—

“Blood for blood! Fiends of the infernal regions, your hellish triumph shall yet sound your own death-knell! *Morrow’s* blood will be avenged! Aye, cowards! you have just murdered a better man than ever wore the British uniform, and you come here to insult his captive friends; but give me my arms and equal terms, and you dare not move your craven tongues to boast of your halters. Halters are fit arms for such scoundrels to use, and well become your youthful Queen, and her brave and chivalrous soldiers! Can I stand the halter? you ask. Aye, a thousand, if it were necessary to deliver me from such tyrants as you. Out upon ye, cravens! throw away the sword, and carry a halter instead.”

Townsend answered, “You rave like a lion, but the halter will tame you, you d—— Yankee!”

Very different were the conduct and feelings of others who took part in the transactions of that day. That of sheriff Hamilton, in the performance of his odious duties, was such as might have been expected from a humane and christian man. It is customary for the sheriffs of Great Britain to employ a hangman, usually known by the significant term of “*Jack Ketch*,” to execute the most revolting part of their duty; and the wretch is generally obliged to wear a mask on the occasion, to avoid no less the obloquy attached to his office than the fury of the populace, who, under the excitement occasioned by the disgusting spectacle, frequently mob and

sometimes kill a hangman as they would a snake. Hamilton offered a bribe of one hundred pounds to any one who would hang Morrow; but such was the general esteem in which the victim was held, and the odium attached to the office, that no man mean enough to accept it could be found, except a colored fellow who came sneaking about the back part of the jail the day previous. Having accidentally learned his business from the jailer, I asked for an hour's promenade in the hall. Placing myself at an open window secured by iron grates, which commanded a view of the yard and grounds where the intended finisher of the law was whiling away, in secret, the hours which stood between him and the bribe, I easily attracted his notice. In a moment, a tall, raw-boned, hungry and hardened looking black stood before me, inquiring, "Vot for you want Sambo?" "I understand you intend hanging Morrow to-morrow?" "Yes, zur." "What do you get for the job?"—"Vun 'undred pounds zurling, zur," and his eyes glistened with satisfaction. "Do you value your life at one hundred pounds?" "Vot you zay, zur?" "Do you think the people will let you live, after doing so foul a deed?" "Vill dey kill um?" "That they surely will: your life is not worth sixpence if you hang that man." The scoundrel's ivory chattered with fear. By this time I was joined by my fellow captives, who all assured him that what I said was true. "'Tank you all,—save me life; me no do it;" and away he ran through the back fields, never appearing again as a candidate for the honorable office of "Jack Ketch." The consequence was, that the sheriff was under the necessity of either resigning his office, or doing his own dirty work. The friends of Morrow were in hopes that he would do the former, and thus, perhaps, by deferring the execution, save his life. He said that he was only the instrument of the government, on which the blame rested; yet it was very hard to hang a better man than himself. An old woman who sometimes visited the jail to minister to the wants of the prisoners, told him that if he hung Morrow, the vengeance of Heaven would soon overtake him. Her words proved true, for a few months afterwards he was, by an unusually sudden death, called to join his victim in the

land of spirits. He was, however, esteemed by all who knew him as a very excellent man; and his conduct towards us was at all times respectful and humane. He was melancholy from that day until his death. The voice of an accusing conscience was doubtless the cause.

After the execution of Morrow, I was visited for several days in succession, by one of the Catholic priests before referred to, who manifested a very strong desire to convert me to Catholicism; and we spent considerable time in arguing the merits and demerits of our respective Bibles, doctrines, &c., the details of which are too lengthy for this volume.

The last time I had the pleasure of seeing him, the following dialogue took place:

“Why do the Catholics pray to the Virgin Mary, and other saints?”

“They only pray to them as mediators, asking them to intercede in their behalf, with Jesus Christ, into whose blessed presence, from the holiness of their characters, while here on earth, it is certain they are admitted in Heaven.”

“Does Christ need such intercession, to induce him to be merciful to those who love and pray to him?”

“Christ may listen to those near him in Heaven, whom he loves, as the Virgin Mary and his apostles, if they can be prevailed upon to join in our requests, when he would otherwise deny us.”

“Are the saints in heaven endowed with the attributes of Jehovah?”

“By no means. They are all, doubtless, free from sin in the other world, in which respect they are perfect, but no one supposes they are equal, in any respect, to the Almighty.”

“Why pray to them, then?”

“For the reasons which I have before assigned.”

“But to hear your prayers, they must be omnipresent as the Deity himself, for the Catholics address them at the same time, from all parts of the world. How can the Virgin Mary hear a thousand such petitions at once? To know whether these petitions are proper to be answered, that is, if it is consistent for divine Providence, in his government of the world,

to grant your requests, and also, whether, if granted, they would really prove a blessing (for God is sometimes really merciful in denying our foolish petitions) the saint whose intercession is sought must necessarily possess another chief attribute of the Deity, omniscience. According to your own admission, then, it must be folly to spend your breath in praying to them, when they can neither hear your prayers nor judge of their propriety if they could hear them."

"My friend," said the priest, "I see that you and I can not agree on these points; indeed, I confess I have never thought upon the subject in this light; yet I doubt not my superiors in the church can explain this apparent inconsistency satisfactorily." We shook hands cordially, and I have never seen him since.

I was likewise favored, about this time, with visits from Major —, of the 24th. He was a very religious man by profession, and thought to convince me that rebellion to the "powers that be," is under any circumstances, unscriptural and wicked. He believed, he said, that I was sincere, and my motives in joining the Canadians were good, (he was one of the officers present at Drummondville, when Townsend abused me.) but if I died in that belief, I was certain of going to Hell, where the prince of rebels, Satan, reigns. He talked some, and asked permission to pray some, but his arguments and prayers smelt very strongly of brimstone, when he got upon the subject of rebellion against his sovereign lady, QUEEN VICTORIA. The sweet creature! He said he would wade up to his knees in blood to serve her;—upon which I told him I *guessed* I should have enough of his company, in that region of the other world to which he consigned the rebels; and so we parted. I verily believe, after his unsuccessful efforts to convert me to monarchy, he thought me a desperate fellow, and certain of a hot berth in "t'other world."

CHAPTER X.

The Court.—The Trials Falsely Reported in the Tory Newspapers.—Packed Juries.—The Author is tried.—Plea of Insanity.—Verdict of the Jury.—Infamous Conduct of the Judge.—The Jury alter their Verdict.—The Tory Lawyer.—Arraignment of Sixteen Prisoners to receive Judgment.—The Court Room.—Demeanor of the Prisoners and Spectators.—Address of the Judge to the Author.—The Author's Reply.—Sentence of the American Citizens.—Sentence of the British Subjects.

AT the session of Oyer and Terminer and general jail delivery, held at Niagara on the first of August, twenty persons were convicted of treasonable offenses. The trials were void of general interest, except as they served to show the corruption of justice in Canada. The reports of the trials, as they appeared in the Tory newspapers of the country, were generally palpably *false*. The testimony against the prisoners was altered so as to make their characters and offenses as black as possible, in order to prejudice the public mind against them, cast contumely on the Patriot cause, and prevent any sympathy being felt for the unfortunate victims upon whom the vengeance of the law was to be executed. Most of the jurymen were Tories, and tools of the government. There were, however, some honest men amongst them, some of whom, in spite of every precaution taken by the Attorney General, would occasionally get a seat in the jury box, and many thereby got acquitted.

I had intended to manage my own defense; but, at the urgent solicitation of my friends, who said the government were determined to hang me, and the only chance for my life would be to set up a plea of insanity, I yielded a reluctant assent to their wishes for a sham defense, which was managed by a Mr. Boulton, a Tory lawyer of Niagara. The only ground for this plea was, that a few months previous,

I had, unfortunately for myself and friends, suffered, through a fit of sickness and too close application to my professional studies, a partial derangement, which lasted two or three months. This affliction, from the consequences which resulted, was most distressing to myself and relatives. Friends whom an affliction of this nature can estrange, must be heartless and fickle, and enemies who can persecute at such a time, can scarcely be called generous.

After a long and tedious trial, the jury retired for half an hour. This was a time of intense anxiety and excitement, and although I expected and had prepared my mind for the worst, yet it was impossible not to hope, even against hope, for an acquittal.

The jury at length returned into court, and delivered their verdict, which was,—

“GUILTY; with an earnest recommendation of the prisoner to the extreme mercy of the court.”

Chief Justice, in a great rage.—“Gentlemen of the jury, do you know that your verdict is, virtually, an acquittal?—How dare you bring in such a verdict in this case? There are no favorable grounds upon which such a recommendation can be based. The prisoner is the most guilty of any of the party, for he can not plead ignorance as the others; he richly deserves the highest penalty of the law. If you believe from the evidence, that he was not of sane mind at the time of the commission of the overt acts of treason charged in the indictment, it is your duty to acquit him; but insanity before or after the commission of the crime, can not affect your verdict.”

The foreman.—“My lord, the jury regard him as having been partially deranged some months since, but of sane mind when he invaded this province.”

Chief Justice.—“Then retire, gentlemen, and reconsider your verdict. You can not recommend him to mercy.”

In a few minutes they returned with a verdict of—

“Guilty; with a recommendation of the prisoner to the mercy of the court.”

Chief Justice.—“Gentlemen of the jury, I’ll teach you

your duty. How dare you return such a verdict? If you are determined to recommend the prisoner to mercy, state your grounds for so doing, that the court may judge if they are sufficient; but they can not be, and you ought to know your duty better. You are a disgrace to the jury-box and your country."

A jurymen.—"My lord, we recommend him on account of his youth."

Chief Justice.—"That is no excuse for his crimes; he is old enough to know better, and I know him to be the most guilty man we have tried."

Another jurymen.—"My lord, we believe him to be an enthusiast in the cause in which he was engaged; that his motives were good, and his conduct honorable and humane."

Chief Justice.—"His enthusiasm is no excuse, and you have no evidence before you that his conduct was either honorable or humane, as you assert. You are not to allow any thing which you have heard out of court to prejudice your minds in the prisoner's favor. The lancers, who were prisoners in the hands of his party, are present; but his counsel has not thought proper to call upon them as witnesses; the presumption is, that their testimony would rather prejudice his case than otherwise. The consideration of mercy, gentlemen, does not belong to you. Your duty is to pronounce the prisoner guilty or not guilty; and you ought to presume that the court and the Lieutenant Governor know, better than yourselves, what circumstances, if any, in this case, will admit of a favorable construction."

After a short consultation, the jury returned a verdict of *guilty*, only, and the infamous Chief Justice—a second Jeffries—with a countenance beaming with hellish smiles, bowed to the jury, and eagerly directed the verdict to be recorded. There sat my worthy counsel, in his robes, during the enactment of the foregoing scenes, without uttering a single protest against the Lynch law used by the Judge, to shake the resolution of the jurors, and obtain a verdict, under which the extreme penalty of the law might be inflicted. The lancers were present, and asked me why

Mr. Boulton had not called upon them, as they were certain their testimony would have cleared me. I have always thought the same, but my Tory counsel, for reasons best known to himself, chose not to call them.

On the 5th August, fifteen fellow captives, beside myself, were arraigned at the bar of the court to receive judgment. Four of the sixteen were tried as American citizens, the others, as British subjects. The court room was densely crowded, and as I glanced my eye over the assemblage of men whom curiosity or other motives had drawn together, to hear the solemn doom of death adjudged to sixteen of their fellow mortals, it rested upon several respectable Canadians whose lives, fortunes and honor were pledged in support of the cause of liberty. A few of the spectators conducted themselves with shameful levity, and it was evident that they had come hither as to a fair, or to prop up their loyalty to their sovereign, by casting contempt upon their fallen foes; but the countenances of the great majority were serious, and methought I could see the divinity of compassion stirring within their breasts, and their silent aspirations ascending upward to the throne of the Eternal One, for Him who sitteth thereon, to extend to us that mercy which an earthly tribunal was about to deny us. The stillness of death succeeded the proclamation of the crier, to keep silence. I glanced at my fellow captives. Their demeanor was respectful, and befitting the occasion. There was an air of calmness resting upon their countenances, an indefinable something in their manner, which might have told their blood-thirsty enemies that no coward's heart beat within the aching breasts of their victims; that no sense of guilt, in the eye of Heaven, raised its accusing voice against them; that condemnation, under an unjust law, by an unjust Judge, though it might loose the silver cord of life, and break the golden bowl of earthly enjoyments; though it might hang up their bodies between heaven and earth, as unfit for either, and scatter the elements of their earthly tabernacles to the winds of heaven, could not deprive them of the conscious-

ness of rectitude, or make them love less the cause of Canadian liberty:

Chief Justice Jones.—“Linus Wilson Miller, you stand convicted of a wicked attempt to overthrow the government of this colony, by force of arms; a citizen of a foreign country at peace with Great Britain, of which kingdom this province is a dependence, you have joined in a most atrocious conspiracy to subvert the laws and institutions of the land, aided by wicked and disaffected subjects of her Majesty; you have invaded this peaceful and happy province; seduced good loyal subjects from their allegiance to their gracious sovereign; raised the standard of rebellion, and attempted the lives of a great number of her Majesty's soldiers, who were nobly serving their country. It is in evidence that you were at the battle of the Short Hills, on the 21st June last, with arms in your hands, and acting a very important part in the transactions of that day. Although, happily, no lives were lost at the time, you are as guilty in the eye of Heaven, as though your murderous hand were actually stained with the blood of your intended victims.—You have had the benefit of a fair and impartial trial; the court have granted you every facility for making your defense; and a trial by jury, the birthright of every Englishman and subject of her Majesty in this happy country, the sacred peace and tranquility of which you have violated, has likewise not been denied you. Your education and profession should have taught you to venerate the laws, and to assist in the preservation of peace; but you have learned, too late for repentance, that Heaven will not allow wickedness to prosper; yet the awful doom which my imperative duty compels me to pronounce in this case, may, and I trust it will, prove a salutary warning to your countrymen, thousands of whom are leagued with you in the same unlawful and unholy purpose. A jury of twelve honest and respectable men, after a long and patient hearing of the evidence for and against you, have pronounced you guilty, without any qualification of their verdict; and you can therefore have no hopes of mercy. You are aware of the dread-

ful penalty which the law you have violated attaches to the guilty, and I now ask if you have any thing to say why sentence of death should not be passed upon you."

"My lord, your lordship has asked whether I have anything to say, why sentence of death should not be pronounced against me. I shall, with the permission of your lordship, offer a few remarks; not, however, with the hope that I shall be able by any thing that I may say, to turn aside the impending fate that awaits me."

"When I entered this court-room, a few minutes since, I neither intended, nor felt any inclination to raise my voice in my own defense, or offer any remonstrance to the proceedings taken against me. I considered it useless to do so; for, from the course pursued by this court, from the first, I knew myself a *doomed man*. I felt, too, that the ties which bound me to this earth, were already nearly severed, that the bitterness of death was past, and that I was resigned to my fate. But, my lord, when I look around upon this assembly, and see so many of my fellow creatures, whose countenances are beaming with happiness and peace, and kindly sympathies for the woes and wretchedness of the unfortunate; when I look out upon the fair face of nature, and see so much that is beautiful and lovely; when my ear catches the hum of the happy multitude, as they thread the pleasant mazes of human life, in which scenes I so recently participated; and above all, when memory calls up the past scenes of childhood and early youth, when all was bright and fair, and I think of my own happy home and the kindred spirits *there* who love me, I can but feel that there is much to bind me to earth; that it will be hard to die. And, my lord, hard as it may be for one so young in years, to bid adieu to earth, it is harder still to die the death of a *felon*. Was the crime of which your lordship has told me I stand convicted, of a nature to deserve death, and bring upon my name that contumely and reproach which justly belong, and are attached by universal consent of the good, to depravity of conduct; was I even sensible that I stood before an impartial court of justice, fairly convicted of a crime which,

had I but succeeded, would have been rewarded as a virtue, but, having failed, subjected me to the penalty of an ignominious death, I would bear without a murmur of complaint the consequences of my own folly. But, my lord, I can not yield a silent assent to the pertinent remarks which your lordship has thought proper to make with reference to my case, lest the world should thereby adjudge me deserving of all which I am about to suffer.

“In reference to the statute under which I have been tried, I am under the full conviction that it is unconstitutional, and in this opinion, I believe I am sustained by some of the legal gentlemen now present. I am of the opinion that no statute, affecting the life of an individual, whether a subject or not, can be considered the law of the land until it shall have received the sanction of the sovereign. Indeed, your lordship must be aware, that an imperial statute has imposed an inability upon all provincial legislative bodies to enact such a law, and the right to legislate upon the subject of treason, belongs exclusively to the imperial Parliament. If I am right upon these points, the proceedings of this court with reference to my trial, are illegal and void, *ab initio*; and I do not, as your lordship has said, stand convicted of any crime nor subject to any penalty. I know, my lord, that under this statute Colonel Morrow has lately suffered, and I have no reason to suppose that my pleading its unconstitutionality, will be any bar to the awful fiat which is about to fall from the lips of your lordship.

“I am indeed asked why the sentence of the law should not be passed upon me; why I should not yield up my life without a struggle; why I should not die a felon's death and go down to a felon's grave, an outcast of earth, accursed by my fellow men as unfit to live, yet worthy to die! If I had done a deed worthy of such a fate, I would say, let it come; but I declare to your lordship, that according to the dictates of my own judgment, I deserve neither death nor bonds. I have not been guilty of the death of any fellow man; I have taken from no one that which was not my own. According to the evidence produced in this court, by the Attorney Gen-

eral to convict me, I came not into this country to destroy its form of government, but with the most friendly intentions; according to that evidence, my sole business at the Short Hills was to induce the deluded men there, to return to the United States without disturbing the peace of the country; and when, after the most persevering efforts, I failed in my purpose, I attempted to return as I came, but was prevented from doing so by the lines being guarded. Thus situated, I had no alternative but to return and seek safety with the party. Young and inexperienced, I was led into the error—if error it may be called—of which I stand convicted, by the advice of others. Had truth and justice prevailed, I should not now be called to stand before your lordship in peril of my life.

“I say I stand convicted; but upon what evidence has that conviction been obtained? Upon that of the perjured Doan, who has become an evidence for the crown to save his own life. True, there has been some other trifling evidence against me, from persons who I believe intended to speak the truth, but they were in error; no doubt they were led astray from the necessary confusion of the moment.

“From the defense set up by my counsel, contrary to my own convictions of justice and against my wishes, most unhappily for myself, the principal witnesses in my favor have not been heard. This, however, was no fault of the court, but my misfortune. I see those witnesses present to-day, to hear my doom, whose evidence might have averted it. I appeal, my lord, to the lancers, whether I did not, in the case of more than one of their number, at the risk of my own life, stay the hand of the assassin, and prevent the effusion of blood. I appeal to every individual present at the attack at the Short Hills, whether I did not every thing in my power to restore property which had been taken, and set the prisoners at liberty.

“I am here before your lordship, convicted, I am told, as a felon; but appealing to my own conscience, I declare to your lordship, to the court and to the world, that I cannot consider myself guilty of a felonious act. My judgment and my con-

science approve of my conduct; yet, if it is my fate to suffer death, I trust I may be enabled to meet it with becoming firmness, and bow to the mandate that decrees it."

The Judge then asked the other Americans the usual question; and nothing being said, except by the poor boy, Cooley, who only laughed, and told him to "Go a-head," he proceeded to pass sentence, prefacing it with some remarks, intended as a reply to what I had urged with reference to the unconstitutionality of the law under which we had been convicted; justifying the enactment of the law and the punishment under it, upon the ground of expediency; there being no other law, as he said, for punishing treasonable offenses committed by foreigners; and the country being in imminent danger from foreign invasion. It was, therefore, as much the law of the land as any under which the province was governed, and under these circumstances required not the sanction of the home government, &c., &c.

"The sentence of the court is, that you, Linus Wilson Miller, George Cooley, Norman Mallory, and William Reynolds, be taken to the jail from whence you came, and that on Saturday the twenty-fifth day of this present month, you be taken to the place of execution, and be hanged by the neck until you are dead."

The Solicitor General then moved the court for judgment upon the other twelve, who were tried as subjects of the crown. They were separately asked if they had any thing to say, why the sentence of the law should not be pronounced against them. In the case of Mr. Wait, his counsel moved that the verdict be set aside, on the ground that Mr. Wagstaff, one of the jury who had pronounced him guilty, was not a liege subject, but a citizen of the United States; the law making it imperative that the jurors, in the case of a capital offense, should be British subjects—but the court decided that it was too late to interpose that plea. One or two others made a few remarks, when the Judge proceeded to what should have been a painful task. He told them that in all probability, mercy would be extended to some of them, but to whom, no one then knew; and that the recommenda-

tions to mercy by the jury, in the cases of some, would be represented in the proper quarter. He urged upon them all, the importance of immediate preparation for another world, and then pronounced the following sentence :

“The sentence of the court is, that you, Samuel Chandler, Benjamin Wait, Alexander McLeod, James Gemmell, John Grant, Murdoch McThaddon, John James McNulty, David Taylor, James Waggoner, Garret Van Camp, John Vernon, and George Buck, and each of you, be taken to the jail from whence you came, and that on the twenty-fifth day of this present month of August, you, and each of you, be drawn on a hurdle to the place of execution, and that you be there hanged by the neck until you are dead; THEN YOUR BODIES ARE TO BE QUARTERED; and may God have mercy on your souls !”

Several of the spectators responded a hearty amen to this last expression, and many burst into tears, among whom I noticed one of the bailiffs, who had us in charge. Reader, it was a solemn scene. Sixteen men, many of whom were in the morning of their days, doomed by an earthly Judge, to die in the cause of *freedom*. If there were no avengers upon earth, there was One in heaven, who looked upon that corrupt court, and unjust Judge, and said, “Vengeance is mine — I will repay.”

CHAPTER XI.

The Condemned Prisoners.—Visits of the Tories.—Scorn for Scorn.—Sublime Speech of the boy, Cooley.—Visits from Friends.—Intercession of the Lancers.—Letter of the Honorable W. H. Seward to Sir George Arthur.—Sentence of Death commuted to Transportation to Van Dieman's Land.—Removal to Fort Henry.—The Parting.—Intercession of Mrs. Wait and Miss Chandler.—Desertion of British Regulars.—Arrival at the Fort.—The Point-au-Pelee Prisoners, and others.—The *Ex Post Facto* Law.—Treatment of the Prisoners.—Exercise.—Mr. Wixon.—Mr. Parker.—Letters to Friends.—Sherif Macdonald.—Treatment of David Taylor.—Death bed Scene.—Arrival of Prisoners from Niagara.—Visits of Sir George Arthur.—The Unwelcome Notice.

No language can describe the anxious days and nights endured by our doomed party, while under sentence of death. As no one knew who, if any, would be spared, the excitement which all experienced, was greater than it would have been had it been expected that all would suffer. The men, in general, exerted themselves to appear cheerful; and while many a prayer was offered in secret to that Gracious Being who tempers the wind to the shorn lamb, a casual observer would scarcely have dreamed, from the calm and cheerful looking countenances we wore, that our days on earth had been limited to so short a period. There was scarcely an hour in the day that some of our enemies were not there, apparently to insult our misfortunes. Not unfrequently might be heard the laugh, sneer, and taunt of some old Tory, as he stood peeping through the grates into our cage, and seldom, indeed, did it happen, that some of our number were not ready to "repay with interest, scorn for scorn."

"We have you fast you d—— rebels! Sixteen for the halter! ha! ha! ha! I'm coming to the fair on the 25th; wife, family, and all; will give five dollars a head for a stand near the drop, just to see you kick the air, ha! ha! ha!" shouted an old grey-headed man, one day from the front hall.

"Aye, fetch the family," replied a dry chap, who lived within a few miles of our jolly visiter. "The sight of such a grand hanging-match will do them good, it is to be presumed, for the example is just the thing they need. I have the pleasure of knowing something about them, old *Beelzebub*. I caught your youngest son, a few weeks since, robbing my hen-roost; the older ones, I hear, pursue larger game; and there's the *gals* too, who have been on the town these eight years, let them come along, and bring their gallants with them. It will do them all good to see how the thing is done; they'll learn how to behave when their turn comes. How often have you come to look at them in this cage? Say, old fellow, tell us all about it."

"You d—— liar!" shouted the old man, as he retreated, having, as we all thought, the worst of it.

On another occasion, several of these gentry were joking, apparantly in great glee and anticipating a grand treat on the 25th instant, when the boy Cooley, with a peculiar grin on his countenance, which he always wore when he thought he had something cunning to say, walked up to the grates and exclaimed, "We're the chaps to break up your goose nests, he! he! he!" This was so sublimely ridiculous, that our guests were at first at loss to understand it, and when at length they "took it in," through their thick pates, they tried in vain for half an hour to say something to match it.

We were daily visited by friends, and particularly clergymen, many of whom appeared deeply and sincerely to sympathise with us, and sometimes a solemn scene of weeping and prayer took place, in which some engaged who had perhaps scarcely wept or prayed before for many long years. We were encouraged by hundreds to hope for the best; but at the same time admonished to be prepared for the worst. Many believed that no more executions would take place, and numerous petitions, bearing signatures of the most respectable inhabitants of Canada and the adjoining states, were forwarded to Governor Arthur, praying for mercy in our behalf. I had the satisfaction of hearing from Mr. Boulton, that the lancers, whose lives I had saved, went, imme-

diately after I was sentenced, before a magistrate of Niagara and made oath to the facts; a certificate of which was forwarded to the Lieutenant Governor, and this saved my life, as my father was afterwards assured by the Colonial Secretary. Many, very many kind friends in my native state, were not unmindful of me in my affliction; and their efforts to save me entitle them to my lasting gratitude.*

On the 22d instant, the sheriff came to the jail and read as follows, from a document which he held in his hand: "Linus Wilson Miller, his excellency, the Lieutenant Governor, has been graciously pleased, in consideration of some circumstances in your favor, to commute your sentence of death to transportation for life to her Majesty's penal colony of Van Dieman's Land." The same mercy—if it may be so called—was, on the same occasion, extended to twelve others of my comrades, leaving Messrs. Chandler, Wait, McLeod, Warner, Brown, and Beemer still under sentence of death. The two last were tried some days subsequent to us.

* The following letter was written by WILLIAM H. SEWARD, since Governor of the State of New York:

STOCKTON, Chautauque County, N. Y. August 15th, 1838.

To His Excellency, Sir GEORGE ARTHUR:

Sir,—The purpose of this letter, I am sure, will be my apology for addressing you.

I do not know whether it has been the good fortune of my friend, Mr. Francis Hall, (of the New York Commercial Advertiser,) to obtain the honor of your Excellency's acquaintance. I happened to meet him at the Niagara Falls during the period of the trials of the persons implicated in the affair at the Short Hills. I discovered then that he had become much interested in behalf of Linus Wilson Miller, a young man, formerly a resident of this county, who was under arrest for a participation in that offence. Since that time, Mr. Miller has been convicted, and he is now under sentence of death, to be executed on the 25th instant. Mr. Hall, with persevering benevolence, addressed a letter to Col. William L. Stone, of New York, a mutual friend, requesting him to write to me, and solicit my interposition in an effort to move your Excellency's clemency. In the absence of Colonel Stone, his associate, Mr. Inman, immediately made known to me Mr. Hall's request. To comply with it was, as I am sure your Excellency will admit, an obvious duty. I have stated thus circumstantially the manner of my engagement, in justice to the gentlemen whose humanity has induced them to take so active an interest in the fate of a stranger.

I certainly have no ground to suppose that your Excellency has any knowledge of so humble an individual as myself; or that any thing that I could offer would have any influence on your Excellency's course in this unhappy matter. All that has seemed to me within my power, I have done. I have come to the home of the afflicted parents of Mr. Miller, have conversed with them, and have embodied in a petition the feelings they have expressed to me, as far as they can be written.

The petition accompanies this letter.

It would be difficult to say whether I rejoiced or mourned at this change in my prospects. Could I have then foreseen one-fourth part of the sufferings which that commutation entailed upon me, I should certainly have preferred immediate death; but the veil of uncertainty hid things from my view, and so long as I could hope even for a chance of escape from my enemies, so long I could wish to live.

On the 23d instant, we were chained and hand-cuffed in pairs, and removed under charge of the sheriff, per steam boat "Traveler," to Fort Henry, Kingston. Our parting with our more unfortunate companions was heart-rending in the extreme, as we had little hopes of ever seeing them again in this world; and, with the exception of Beemer, they were all much esteemed. The estimable wife of Mr. Wait, and daughter of Mr. Chandler, were then absent on a mission of mercy to Lord Durham, the Governor General, and the result was anticipated with feelings of the most intense excitement.

Commending our friends to the gracious protection of the great Ruler of the universe, who was able to deliver them out of the mouth of the lion, we bade them a painful adieu. A guard of sixteen men, of the 24th, accompanied us; several of whom were desirous of deserting to the American lines. This practice prevailed to an alarming extent to British interests during the whole season of '38. Scarcely a

I have also read the petition, subscribed by very many highly respectable citizens of the county, who have been personally acquainted with Mr. Miller. My own acquaintance with him is very slight; but, so far as my knowledge extends, I concur in the facts stated in the document, as I do with all my heart in the prayer with which it concludes.

If to this application of his neighbors and friends, and to the supplication of his respectable and worthy parents, I dare take the liberty to add one word, it would be to say, that, as a citizen of this country, not altogether unacquainted with the feelings of my countrymen, and cherishing always an earnest desire for peace and harmony between the respective governments, I am satisfied that the exercise of executive clemency by an unqualified pardon in the present case, if consistent with your Excellency's duties as Chief Magistrate, would be productive of a most auspicious influence on the frontier, and elevate your Excellency in the esteem of the good citizens of this State. I write under the paternal roof of the subject of my solicitude, and in the presence of his parents; and I am sure it would give your Excellency the most sincere and generous happiness to send into the bosom of this afflicted family, that message, which, in the providence of God, can come from none else.

I have the honor to subscribe myself, your Excellency's very obedient servant,

W. H. SEWARD

night passed, under cover of which their veterans were not able to make a pilgrimage to our shores, where they usually sold their *kit* for a "week's spree," in honor of their escape, and then commenced work like real *Jonathans* with a vast increase of pay. Whether, however, this violation of their oaths, was as justifiable, as it was expedient, is a question which their own consciences best can decide. Deliberate perjury requires a very strong plea of justification. Is it honorable to encourage desertion, even from an enemy? That which has been found to be expedient, and practiced in all ages, may not, after all, be right.

Arriving at Kingston, we were landed privately, and marched by a back road to Fort Henry, which is by far the most formidable fortification in Upper Canada. After being unshackled, we were turned into a room formerly occupied by Messrs. Parker, Montgomery, and others, and from which they made one of the most wonderful escapes from prison on record. Watson and Parker were re-captured, but the others, fourteen in number, succeeded in gaining the American side of the line. In this and the adjoining room, were the Point-au-Pelee prisoners and ten persons who were taken at the first outbreak on Yonge street. The former had not been tried, in consequence of having been captured previous to the passing of the provincial act, of the 12th of January, '38, providing for the trial and punishment of American citizens; it being erroneously understood, that they could not be tried, as subjects for the time being, under the old law for treason. The latter were the remnant of a large number of prisoners, who had petitioned the Lieutenant Governor for pardons, under an order of council, which authorized that functionary, to accept petitions of the political prisoners, who should confess their guilt, at his discretion; and order such punishment to be inflicted upon the offender, death excepted, as should to his Excellency seem fit. This order was passed when the jails of the province were full, and it was found impracticable to try so great a number in the usual course of criminal law. It was not only strictly *ex post facto*, but the governor and his council pos-

sessed no authority for enacting a law of that nature. Not even the executive of Great Britain has that prerogative. Several hundreds of British subjects, however, were admitted to bail, and many were banished, without further trial, from the province, under pain of death, if they returned, by virtue of this act. There should have been sufficient talent in the province, to have foreseen the consequences which afterwards resulted from the attempt to transport Messrs. Parker, Wixon, and others, to Van Dieman's Land, instead of admitting them to bail.

The room which we occupied was about twenty-four by forty feet, and was warmed in cold weather by a large stove. Bedding and rations were furnished us. The former was as good as could be expected; but the latter was not only deficient in quality, but quantity, and was cooked by a soldier of the garrison, whose habits of cleanliness might have been greatly improved. We were, however, allowed to purchase bread, and other provisions, from the canteen, by paying an exorbitant price. Knives and forks being prohibited, fingers and teeth were very useful, but a hungry man soon learns to despise superfluities. We were mustered several times each day, by the sheriff or his deputy, in order to prevent the possibility of another escape; at which time every article of dress, &c., hanging against the wall, was removed, to satisfy our keepers that there were no excavations.

The best privilege we enjoyed was that of walking in the yard an hour each day. He who has never been a captive can not prize, as we did, the fresh, free air, or the value of an hour's exercise. The physical as well as mental powers, suffer alike from inaction, occasioning a morbid sensation, exceedingly detrimental to enjoyment of any kind. This hour was the only opportunity we enjoyed of cultivating an acquaintance with our captive friends in the adjoining room. Among them was Mr. Wixon, a Baptist clergyman and a very estimable man. He had lost a leg in his younger days, but some indiscretion in the use of his pen and tongue, upon the subject of the rebellion, had thrown him into the hands

of the Philistines, who did not favor him in the least on account of his absent limb.

A sentry was constantly parading before our windows, and it formed no small part of his duty to look in at his charge every five minutes. But our enemies were the losers by this arrangement, for many a sworn servant of her gracious Majesty here received information with reference to desertion, which was generally improved to the best advantage. We were allowed to write to, and receive letters from our friends, once in two weeks, but all communications were inspected by the sherif. One or two letters were returned to me, which I had written to my brother, on account of their containing some offensive expressions with reference to our treatment and the government, and thus were we soon taught to praise our enemies, if we wished our friends to know that we were well ; and, indeed, I have even found a little fulsome flattery indispensable in this matter. Only say "*Mr. So and So*, who has us in charge, treats us with the greatest kindness and affability, grants us every indulgence consistent with the faithful discharge of his official duties and is a gentleman of the first respectability," and should you have no money to pay the postage on your letter, *Mr. So and So* will pay it himself, rather than allow so elegant an epistle to pass unseen into oblivion. We received frequent visits from gentlemen belonging to the British provinces, and occasionally to the States.—They always accompanied sherif MacDonald, who appeared to feel quite proud of the state prisoners, as we were called, and would generally say something in our praise ; but when alone he sometimes gave us a terrible tongue-thrashing, for some trifling indiscretion. He was bitter, cutting, and sarcastic, when he chose to be so, and I am sorry to say it, would swear most vehemently when in a rage. I have ever thought that interest alone made him a supporter of the Government, and that in principle he was with us. Some Tories, who gained admittance under his wing, attempted to abuse and insult our misfortunes ; but he told them plainly, in our presence, that while he had charge of us, the Governor himself should not take that liberty. "Place them on an equal foot-

ing with yourself," said he to an old Tory, one day, "and you will have no disposition to impose upon them the second time. They are all brave men, and know how to behave themselves, and no man shall take advantage of their defenselessness to insult their feelings."

Soon after our arrival at the Fort we had the misfortune to lose one of our number by death. David Taylor, a young Canadian of mild and gentle demeanor, steady conduct, and good principles, had taken a severe cold at Niagara, where, although removed to the hospital for a day or two, he was much neglected by the doctor, a man who seemed to esteem the life of a rebel captive as of little or no consequence.—When we were removed he was quite ill, notwithstanding which, this man ordered him to be shackled, the same as if quite well, and was shamefully harsh and brutal when poor Taylor complained; and I believe that this, together with an almost broken heart, brought on a speedy termination to his earthly sufferings. He never left his bed for an hour after our arrival, but lay in the same room with us, silent, uncomplaining, and fast sinking into the arms of death. Crushed in spirit, his soul seemed to loathe a prison life and hasted to be free. The surgeon of the Fort visited him daily, but refused to remove him to the hospital, where proper care might be taken of him, and indeed, gave him little medicine. He too, seemed to care *nothing* for the life of a prisoner.—The sick man, however, wished to remain with us, and we tried hard to supply, as far as possible, the tender care of a *mother* and *sister*, whose names were ever and anon on his lips, both in his waking and sleeping hours. "Sister," he would say in his dreams, "dear sister, why, oh! why are you absent from your dying brother? Come, oh! come, and give me, but one kiss before I die! come and whisper in my ear that you love me; and mother, too, where, oh! where is she? Mother, dear mother, will you not bless your poor dying son? Will you not say, you forgive him all the trouble and grief he has ever caused you? Come, mother, and smooth my dying pillow; how hard it is! but it will soon be over, for my heart is, dear mother, my heart is broken, and I shall soon die. Do,

mother, do, dear sister, make my pillow softer ; do come and tell me you love me : oh ! let me hear those words once more ! Oh ! the gloomy prison walls—the cells—the chains—how cold and heavy they are on my aching limbs ! Will they not take them off even when I'm dying ? Must I die in chains ? Will they lay my poor body here in this dreadful place, far, far from home and friends ? not even a mother, or a sister, to weep when I'm gone ! Off, off with the chains ! Take me out in the free, fresh air ! let me breathe it again, let me look once more upon the sun, and then kill me, for I can't live in prison. There are no chains in heaven ! oh no, then I shall be free."

On the 27th instant he appeared to be very low, and it was evident that his end was near. Having watched, with James Waggoner, by his couch all night, I sought repose upon my own bed, and was awakened about eleven o'clock, A. M., and informed that poor Taylor was dying. Hastening to his bedside, I was just in time to see him close his eyes, as we all supposed, forever. He lay about fifteen minutes, apparently quite dead, when, to our great surprise he suddenly revived, and a scene ensued which I can never forget. Within thirty seconds after he was observed to breathe again, his eyes opened and his lips began to move, and "Glory—glory—glory ! hallelujah ! blessed Savior, blessed Jesus ! praise Him ! O praise the Lord ! let the whole earth praise and bless Him !" burst forth, as it were, spontaneously from his tongue. For several minutes, similar exclamations filled the dying man's mouth, his countenance beaming with inexpressible joy, his eyes and hands raised to heaven, in the attitude of devotion. Around his bed were the careless sinner, the professed infidel, and scoffer at religion, none of whom could refrain from tears. During his whole illness he had never spoken upon the subject of religion except in brief answers to questions put to him by some of his companions. He now addressed us in the following words : "You all thought I was dead, and I thought so, too ; for my spirit was free, and I was free, and I was with angels, and with Jesus. Oh, it was a glorious sight, and I would not live upon earth, if that was

heaven. The angels told me I was too willing to die without praising the name of my blessed Savior; that I never had praised Him as I ought, and must come back and do so before leaving you forever: that I must be raised to show the power of God, and be a witness to you, my dear friends, of his infinite goodness and mercy in pardoning my sins, and in taking me from this place of sorrow and suffering to heaven."

Observing one who had nursed him with much care standing aside, deeply affected, he said, "W——, come and shake hands with me: do not weep on my account, but witness the power and goodness of God, who would not allow me to leave you without praising His name, and telling you all what He has done for my soul. Look upon me, friends, and see what a reality, what a blessed reality there is in religion. It fills my soul with bliss and inexpressible joy in this trying hour. Oh! will you not love and serve Him, who has done so much for me? Won't you believe in Him? But I have never praised Him before as I ought; nor did I ever know how very precious He is till now. I have been a great sinner, but He has forgiven me, and is now about to take me home to Himself; and I shall soon be free from bonds and imprisonment. Tell, oh, tell my friends that I die happy, that I love them; that I love the cause of liberty; that I love the Savior. But my time is expired, and I am going!—they come—they come—the angels—blessed Jesus—glory—g-l-o-r-y—J-e-s-u-s"—died on his lips, and his happy soul winged its flight, accompanied, doubtless, by angels, to the bosom of its Creator. Thus died David Taylor, aged 26 years. May his political enemies, who condemn the part he acted in the Canadian rebellion as wicked, be equally happy in the hour of death. As I stood by, and closed his eyes, when the last struggle was over, I said in my heart, "Let me die the death of the righteous, and let my last end be like his." His remains were buried without ceremony, in the yard, at Kingston, set aside as the resting place of the prisoner; and many a martyr to the cause of liberty has, since then, found a bed by his side, unwept, unhonored—but blest!

On the 29th, we were agreeably surprised at seeing our

companions, from whom we had parted under painful circumstances at Niagara, march into the Fort; chained, of course—but this was better than the gallows, which we feared had fallen to their lot. They were spared, through the persevering efforts and intercession of the two excellent ladies before mentioned, an interesting account of which may be found in Wait's narrative or letters from Van Dieman's Land, —a book worthy the attention of the reader.

His Excellency, Sir George Arthur, visited Fort Henry twice while we were there; and I consider it only an act of justice, to state his conduct with reference to myself. The first time he came, after examining the Fort and reviewing the troops, he took possession of one of the officer's rooms and sent for all of the prisoners, who were in turn ushered into his presence, by his orderly, the door being guarded by soldiers. When I was admitted, his Excellency said:

“I have sent for you, to learn whether you are sensible of your error with regard to the crime of which you have been convicted. I wish you to understand me. I have become interested in your case, chiefly because I believe you to have been sincere in your conduct; and the lancers, whose lives you saved, have been interceding with me, in your behalf. Take time to consider, before you answer my question. Can you say that you are sorry for what you have done, and promise, if I should grant you a free pardon, to go home to Chautauque, and follow your profession, without taking any further part in the rebellion? Unless you will do this I can not befriend you.”

I confess—I felt grateful to his Excellency, for his kind intentions; but, as I could not say I was sorry for what I had done, or promise to do better in future, being bound by a solemn oath to persevere in the cause until it was abandoned, I told him I trusted he would not deem me ungrateful; but I could not consistently comply with his conditions. He expressed sorrow at my resolution, and said he had no other alternative but to order the sentence of transportation to be carried into effect. The second interview resulted like the first, and his Excellency manifested such friendly feelings, on both occasions that I could not but regard him in a more favor-

able light than others have done. Some of my fellow captives, however, complained that he abused them without mercy.

On the 9th of November, we were much surprised at receiving an order to be in readiness, in an hour's time, for removal to Quebec. We had all hoped, that after a few month's imprisonment where we were, the government would be satisfied to let us out on bail; and indeed, we had received many assurances from friends that such was the intention of our enemies. We all felt, that the hasty measures adopted were *cruel* in the *extreme*: not one had made any preparation for so long a journey; and but one or two had half clothing enough to guard against the cold weather, or money to purchase such necessities as the nature of the case demanded; besides, we were not even allowed to write to our friends, chains and hand-cuffs being put on our limbs within a few minutes after we received the notice. Reynolds and myself were, as usual, united. Mrs. Wait was present, encouraging her husband, and indeed all of us, to bear this adversity with becoming fortitude. Woman has been called the weaker sex, from time immemorial; but certain I am, her conduct often proves the saying false. In seasons of distress, when weakness of mind become manifest, then it is that her strength, her fortitude, and enduring constancy, outshine the most dazzling qualities of man. Those who have experienced or witnessed her ministrations under such circumstances, can best appreciate her inestimable worth; and on the other hand, as the sex sometimes prove fickle and false, none can feel so bitterly the folly of trusting to woman, as the lone captive who finds that the last and only hope of which bonds and imprisonment could not deprive him, was only a breath of wind, to be blown where it listed.

CHAPTER XII.

Removal of twenty-three Prisoners.—The steamer *Cobourg*.—The Thousand Islands.—Dreadful Sufferings.—Prescott.—Amusing Incident.—The Rapids.—Cornwall.—A Tyrant.—Crossing of the Patriots at Prescott.—Alarm of the Enemy.—*Co-teau du Lac*.—Incidents.—Cascades.—The Ravages of War.—Beauharnois in Ruins.—Desolation of the Country, Plunder, &c., by the British Army.—Mansion House of Mr. Ellis.—The Soldier's Account of the Burning of *St. Dennis* and *St. Eustache*.—Sir John Colborne.—Montreal.—The Guard House.—Brutal Treatment.—Col. Townsend.—The Mob.—The Loyal Irishman and Negro.—Anecdotes of the Negro on sentry—and Drill Sergeant.—Arrival at Quebec.—The Jailer.—Notice of removal to England.—Embarkation.

At 12 o'clock, we bade adieu to Fort Henry, leaving many of our companions behind, among whom was Mr. John W. Brown, whose sentence was changed from transportation to confinement in the penitentiary for a term of years; as was that also of Erastus Warner, who received a severe wound in the skirmish at the Short Hills. Both were, however, admitted to bail in about one year afterwards.

The names of my comrades were John G. Parker, Randall Wixon, Finlay Malcolm, Paul Bedford, Robert Walker, William Alves, Ira Anderson, James Brown, Leonard Watson, Benjamin Wait, Samuel Chandler, James Gemmell, Alexander McLeod, John James McNulty, James Waggoner, John Vernon, William Reynolds, Norman Mallory, George Cooley, Garret Van Camp, John Grant, and Jacob Beemer. The first nine were ordered for transportation without a trial, under the act referred to in the previous chapter. The remainder were all taken and tried at Niagara, with myself. We were marched to the wharf in our chains, a distance of nearly half a mile, and placed among the horses belonging to a troop of cavalry, on the middle deck of the steamer "*Cobourg*," where we had but just room enough

to stand upright. The 93d Regiment were on board, bound for the Lower Province, where they were much needed, at that time, to quell a second outbreak. No time was lost in getting under way, and as we glided swiftly down the St. Lawrence, although sensible that every moment was increasing the distance between me and home, and friends, yet I saw nothing, and felt nothing, but the irons, and cold, piercing winds, and I wished for nothing so much as death. Never had I felt cold so intensely before. Long confinement in our warm room at the Fort, and thin clothing, probably caused me to suffer, in this respect, more than I should otherwise have done. But for a blanket and pea-jacket, served out to each man, I verily believe I should have frozen to death.

In the evening we passed the "Thousand Islands," and my poor friend Reynolds, observed to me—"Many are the happy hours I have spent here under *Old Bill*: would to heaven he was here now to serve the 'Cobourg' as we did the Sir Robert Peel." But the hero of the Isles was not there, and we glided past them, feeling in our hearts that beyond there was no hope of relief from our friends. During the night, some of our number lay down, in a pile, among the horses, which, with the hand-cuffs, chains, and manure, formed a very interesting group. It was a night of dreadful misery to all of us. We arrived at Prescott early next morning; and while I turned my eyes towards Ogdensburg, I felt that I loved my country. It was hard to be so near friends, and a land of liberty, and feel the galling chains which we wore. We were here shifted to the steamer "Dolphin," with the same accommodations as before. On our way down the river we saw numerous companies of militia, and volunteers, drilling; who, at the sight of the red coats, would generally cheer for the Queen most lustily.

This seemed to annoy our poor fellows much, and we all felt indignant at hearing such sounds from men in fighting for whom we had lost our all, and were then suffering pains worse than death itself; although the *poltroons* were doubtless ignorant of our being on board. At length, J. J. McNulty, an odd fellow of Irish descent, could bear it no longer, and

jumping upon some boxes, he held up his manacled hand, and with the other waved his hat in the air, in answer to their cheers, and shouted loud enough to be heard a mile: "Hurra for McKenzie! hurra! hurra! hurra for liberty!—you d—fools!" This seemed to check their loyalty, and puzzled them not a little, coming, as it did, from a steamboat showing the "*Union Jack*," and covered with *red coats*; while it excited a hearty laugh among ourselves, in which the soldiers and officers joined. But they afterwards threatened to fire upon us, if it were repeated; the captain expressing his fears that they might think his boat belonged to the rebel party, and attack her; but one of our number told him the militia would sooner fight for than against the rebels.

We ran the rapids of the mighty river, commonly called the "*Long Sault*," in the steamer; a somewhat dangerous experiment, Durham boats being commonly used for that purpose. But one steamboat had ever ventured to do so before; this was, however, an emergency which seldom occurs; the "*Dolphin*," being required below, as well as her cargo of soldiers, the rebels having burned the boats used for transporting troops. There are two channels, one American, the other British, and, as we took the former, I had the pleasure of being transported through the territory of my own country, in chains, for a political offense. We ran a distance of nine miles in less than fifteen minutes. The British channel is generally run in eleven minutes by the Durham boats.

We arrived at Cornwall, a small village containing a courthouse, jail, churches &c., at 2 o'clock, P. M. After some delay, it was determined that we should remain for the present, while the boat proceeded with the soldiers, who were then in great demand below, and it was considered unsafe for us to go further, for fear of a rescue by the rebels of the Lower Province. We were accordingly marched to jail, through mud more than a foot in depth most of the way. Here we had a partial respite from our sufferings, which had become dreadful. This was the first time that I ever felt thankful for the privilege of going to jail. The jailer, an

honest-hearted Dutchman, did every thing in his power to make us comfortable, but a wretch whom they called Colonel Turner, and who commanded the soldies at Cornwall, manifested the most inhuman barbarity in his dealings with the d——rebels, as he termed us. Although our wrists were horribly swollen by the hand-cuffs, and we were as safe as the thick walls of a jail and a strong guard of his own men could make us, yet he forbade the deputy sherif to take them off; and when the physician told him it must be done to save our wrists, he yielded a reluctant consent to have them transferred to our well hands. He threatened, at the same time, to put more irons on, and to shoot the whole party. No savage could delight more in torture, or excel him in ferocity.

On the evening of the 12th, our keepers and the inhabitants of Cornwall were greatly alarmed by the crossing of the Patriots at Prescott. The bells of the churches were rang with violence, for an hour, to arouse the citizen soldiers; and there was a general cry of, "to arms! to arms!" Colonel Turner and his bravos were frightened half to death. Arms were hastily put into the hands of the peasantry, who would, in all probability, have fought against the government, if the Patriots had shown themselves in force. We were kept in continual agitation and suspense, from the exaggerated reports which the terrified jailer communicated to us, and were ordered to hold ourselves in readiness for removal at a moment's warning, as they apprehended a *rescue*. Heartily did we pray that they might not be disappointed. On the 13th, we were placed on board the steamer "*Nep-tune*," and at 7 P. M., arrived at *Co-teau du lac*, where we had a famous ride, in drays, a distance of four miles, to the Fort so called, although it deserves not the name. It took us two hours to accomplish this distance. We remained here two days and three nights, under the Glengarry's, a regiment of Scottish militia, who were rebels in heart to a man. We were confined in a little sty, which would have accommodated half as many pigs very decently. On the 16th, our keepers pressed several carts and drays, and we proceeded

by land. The roads were almost impassable, and it either rained or snowed the entire day, wetting us to the skin in less than hour after we started. We met two regiments of regulars, on their way to Prescott, to crush our friends at the Windmill. When within four miles of the Cascades, we met a regiment of militia, bound for the Upper Province, the officers of which ordered us to get out and walk, as they required the drays to transport their lazy soldiers; but our guard had spirit enough to resist them, and after a long altercation, and *tongue war*, for which they appeared to be well qualified, we were allowed to proceed. On arriving at the Cascades, I was scarcely able to stand. Food was scarce here, our keepers having to ransack the town twice over before they succeeded in finding enough to keep themselves and us from starvation. The soldiers had, literally, eaten the poor *habitans* out of house and home; and as these poor people were looked upon and treated as rebels, they had no redress.— They were of French extraction, and generally suffered much from persecution from the few English resident among them. The next day we were accommodated with the ladies' cabin in the steamer "Dragon," and as we proceeded down the river, we witnessed the ravages of civil war wherever we turned our eyes. The ruins of villages were still smoking; farm-houses, and pleasant villas, were reduced to ashes, and the poor women and children, wandering through the fields and forests, houseless and friendless, without food or clothing, or covering of any kind, to screen them from the piercing cold. Their lamentations were enough to move the hearts of savages to pity; yet, British Tyrants could glory in the heartless destruction and misery which they had so wantonly inflicted upon those they knew to be innocent of the rebellion. Thousands of dwelling-houses were burned by order of Sir John Colborne; and what became of the ruined and suffering families, of old men, women, and children, Heaven only knows. Many must have perished in the snow. The steam boat stopped a short time at Beauharnois, a few days previous a flourishing village, but then a pile of ruins; the sanguinary Colborne having ordered

the houses of the reformers to be burned, and their plantations laid waste, without discrimination or mercy, throughout all the disaffected districts. I went upon deck and looked upon the desolating scene. As far as the eye could reach, the valley of the St. Lawrence, which is perhaps scarcely excelled by any in the world, in the same latitude, in richness, fruitfulness, and beautiful scenery, exhibited the foul work of the destroyer. Smoking ruins, blasted prospects, blighted hopes, piercing cold, starvation, persecution, despair, and death, were all that remained to tens of thousands who had dared, or whose fathers, husbands, sons, or brothers, had dared to raise either arm or voice, against the wanton usurpation of their rights. The village before me was utterly desolate, the inhabitants having fled to the hills and forests to save their lives and escape the wanton fury of the soldiery, whom I saw prowling about in search of plunder; a practice said to have been encouraged by their officers. Every paltry soldier, more particularly the militia and volunteer of the Upper Province, was heavily laden with spoils. Order and discipline there were none; but horses, donkeys, and indeed every thing which could carry a load, were pressed into the *plundering service* of these valiant scoundrels. The beautiful mansion of Mr. Ellis, a member of the provincial legislature, which stood near the wharf, was spared from the flames, for the purpose of being converted into military barracks. A choice library of several thousand volumes, and the most superb furniture, were thrown into the muddy streets. One of our keepers, a Mr. Morris, stepped on shore and selected a quantity of the books from the mess, for his own use, excusing himself by saying, "They will soon be spoiled in the wet and mud; I may as well have them."—He observed to me that the property destroyed in that single house, would, in ordinary times, have sold for twenty-five thousand dollars.

I overheard a soldier describing to a companion, some of the scenes of the first outbreak. Several hundred old men, women, and children, relatives of the rebels, had, upon the defeat of Papineau's party, fled to the churches of St. Den-

nis, and St. Eustache as a sanctuary; but the sanguinary Colborne, surrounded them with his troops, and gave orders that the torch should be applied to the churches, and that every man, woman and child, who should rush forth from the flames, should be instantly shot down. "It was a horrid sight," said the narrator; "they begged for quarter, in the most piteous accents, and their cries and lamentations might have been heard a mile; but they were unheeded; the fire-brand was immediately applied, and then commenced a scene upon which demons could not have gazed unmoved. Aged sires, aged matrons, the faithful and devoted wife, the blooming maiden, the school-boy, and the prattling infant were all there; and as the flames began to spread, their shrieks were so dreadful, so heart-rending that it appeared to me our officers must relent. Some of them seemed moved a little, but others were laughing in derision, and urging their men to slay without mercy. Many rushed forth from the flames, and were instantly shot down. I saw a young and beautiful maiden leap from a window: many shots were fired at her, but she fell not. Rushing toward our ranks, she held up her lily-white hands in supplication, and a few of our men, who perhaps had daughters of their own, cried out, 'Spare her!' but an old gray-headed soldier ran his bayonet through her, shouting at the same time, 'Take that, sweet-heart; no doubt your lover is a d—— rebel!' A mother rushed from the door hugging an infant to her breast. Falling on her knees, she begged for the life of her child, but a bayonet was run through both; after which an officer, in wanton brutality, cut off both their heads with his sword. Not a single soul escaped—all were butchered that did not perish in the flames." Reader, for such praiseworthy conduct as this, the horrors of which are but half told, Sir John Colborne was afterward made a Peer of Great Britain with the title of "Lord Seaton." Can an Englishman reflect upon this and not feel ashamed of British justice; or a christian read it and not

"—— Blush, and hang his head, to own himself a *man*?"

We reached the city of Montreal at 8 o'clock, P. M., cold, wet, and hungry, having eaten nothing during the day. We

were marched to the city guard-house, where the 24th were quartered, and thrust into a small apartment in which we had only room enough to stand upright; but could neither sit nor lie down. Our wrists were very much swollen. The pain of my own was most excruciating, and my limbs were scarcely able to support me. Some of our party had likewise suffered greatly from the irons upon their ankles during the whole journey. Mr. John G. Parker was particularly unfortunate in this respect. We asked a subaltern officer who had us in charge, to take off our hand-cuffs and allow us a light while we ate our suppers, or, at least, long enough to cut our bread and meat; but were told that the “d—— rebels deserved no mercy and we need not expect any.” Some of our men were thirsty and begged for water, but even this was denied them. One of the soldiers placed a lamp near the window over our door; but the officer, with an oath, pulled it down, leaving us in utter darkness to eat the meal which we so much required after our long day of fasting and fatigue.

About 10 o'clock, a commissioned officer of the 24th came in, and, although he did not appear to be troubled with too much of the milk of human kindness, had the decency to pretend extreme displeasure at the wanton barbarity which had been shown us; and ordered part of our number to be removed to the garrison, making room for the residue to stretch their aching limbs upon the soft floor: but the hand-cuffs stuck to our wrists in spite of our remonstrances; a circumstance which deprived me, and I believe several others, of sleep, the pain arising therefrom being too excruciating to admit of even temporary forgetfulness. We were kept in this condition until 4 o'clock, P. M., the next day, without being allowed either food or water, and then marched a distance of half a mile to the wharf. The streets of the city through which we passed, were densely crowded with spectators, who seemed very anxious to stare at “the Upper Canadian rebels,” as we were called. Many of them, particularly the French, manifested much sympathy in their looks, and I saw several burst into tears as we dragged our heavy chains through the mud.

Among the mob was my *old friend*, Colonel Townsend, of the 24th. He followed us the whole distance, manifesting a very laudable desire to make his parting with one whom he had tried hard to elevate as high as the platform of a gallows, as pleasant and agreeable as his excellent breeding, fine feelings, and honorable principles would admit; calling out to his polished blackguard acquaintances every minute and pointing to me, "There goes Miller! Don't you see that tall, slim fellow there? that's Miller, the d—— Yankee lawyer sympathiser." At the wharf a mob of the most squalid, miserable looking objects I ever beheld, was assembled, evidently for the express purpose of insulting us; and an admirable performance they made of it. Groans, hisses, and speeches of various kinds were profusely showered upon us. A fellow close by my side exclaimed, "'Thar go the hinimies of our beloved Queen—damn the hinimies of our beloved Queen—long live our beloved Queen!" I turned my eyes in that direction, and behold, this loving subject of "our beloved Queen" looked as though the woman whose name hung so sweetly upon his loving lips, was very unmindful of him; for he was decidedly the greatest curiosity of the rag-a-muffin species ever imported from the land of "milk and honey," swate Ireland. "Och! och! och! *my coontre, my QUANE! Swate crather!*" How an honest-hearted Paddy, who has been a slave all his days, can love thee! There were likewise several ragged negroes in the mob, probably runaway slaves from the States; one of these fellows manifested more loyalty and love for Queen Victoria than the Irish *crather*. Thrusting his handsome visage almost into my face, he first gave a few genuine *nigger groans and hisses*, and then commenced, "Vot for you no lub our belubed *coon* (Queen) like as Sambo do? Vot for you fight em, eh? You all vun dam bad man. You fight him *coon*. You no lub him *coon*? Sambo lub him *coon*—long lib our belubed *coon!*"

An entire regiment of blacks, officers excepted, was raised in Upper Canada during the first outbreak. One of them was placed on sentry near Chippewa one night, while Van Rensselaer and his men held Navy Island. A Canadian

refugee in endeavoring to pass the lines, happened to cross the Negro's beat, who, as in duty bound, immediately roared out, "Who comme dar?" "Friend," was the reply. "Fren be dam!—say Chippewa tre time, or ye no pass dis nigger dis night." Taking the hint, "Chippewa," the watchword of the enemy, was immediately repeated thrice in succession, and he was allowed to pass; the sentry saying, "Pass on, Chippewa, all well. Go to h—— too, dam fool; meet any more fool, tell 'em say Chippewa tre time, if dey're comin dis way." It was said, although I will not vouch for its truth, that one man drove the whole regiment a mile, by throwing pebble stones at their *shins*. I once passed a Negro sergeant drilling about a score of his comrades, and was not a little amused at the performance. The orders were given after this fashion, "Come dis way; come dat way; turn dis way; turn dat way; turn him toe right; turn him toe lef; face him roun tudder way; cock him gun up straight; now march straight forard; now turn dis way; now turn dat; now stop one dam nigger all; now cock him gun; now persent him gun; not so dam high; not so cot dam low; now pull him trigger; now recubber him gun; now march him straight back where him come from, straight forard; now stop one dam nigger all; now gib him tre cheer vor our belubbed Queen, vot so dam good, gib poor nigger bread and meat." I certainly thought VICTORIA was hard pushed for soldiers

We were well treated on board the steamer "British Queen," had a warm cabin to ourselves, our *wristbands* were taken off, and we were likewise furnished with something eatable; which, after our fast in the hospitable city of Montreal, we much needed. The next day, at 2 o'clock, P. M., we reached the Gibraltar of America. We were well accommodated at the hotel which persons in our circumstances always patronize; had our irons all taken off, and made ourselves quite at home during our stay. The landlord, or "governor" as he termed himself, having doubtless, a dislike to the proper epithet of jailer, was a jolly, honest-hearted old gentleman, and exerted himself not a little to make us cheerful

and happy. As yet we had been led to believe that we were removed to Quebec for safe keeping during the winter; but the day after our arrival, the sheriff informed us that he had orders to forward us at once to England; and as the reader may guess, we all began to smell the *land of Nod*; which Sir George Arthur knew, from experience, to be a fine country, suited to our peculiar tastes and dispositions, or he had not found it in his heart to send us there at so much trouble and expense. A lumber vessel was about sailing for Liverpool, and our passages were forthwith engaged. This was, we understood, the last vessel outward bound for the season, and the river had already begun to freeze over, so that some fears were entertained by the authorities that the vessel would not be able to clear the gulf. The Rev. Thomas Osgood, a very plain, simple clergyman, but an excellent man, whose name is indented with the Sabbath school cause in Canada and some of the New England states, called upon us the day before we sailed; and after saying that he had engaged his passage to England by the same vessel, asked permission to pray with and preach to us during the voyage. This was, of course, granted without hesitation on our part. We asked permission to write to our respective friends before leaving our native land, as we feared, forever. This was granted with an ill grace, however; but not one of our letters were ever forwarded, as I have since ascertained; and our friends knew nothing of our removal until the news found its way into the public papers. On the 22^d November, the chains and hand-cuffs were again put on, and we were marched through the streets of the city to the wharf. We were again the subject of much curiosity, and a mob of Irish emigrants commenced hissing as we passed through the city gate; but a cry of, "Silence! shame on you, to insult the poor fellows," from the citizens, put a stop to it. A boat was in readiness to convey us to the "Captain Ross," a barque of some 250 tons, which lay in the stream with the "Blue Peter" flying at her mast-head. With an aching heart I stepped into the boat, fearing that I might never place my foot upon the American continent again.

CHAPTER XIII.

The Irishman's Soliloquy.—The Lumber Vessel "Captain Ross."—The Prison Cabin.—The Rations.—Capt. Morton.—The Guard of Soldiers.—Sea-Sickness.—The Gale.—Sufferings of the Prisoners.—Attempt to Mutiny.—The Traitor.—A Scene on Deck.—Sail, ho!—Speaking the Baltimore Clipper.—Arrival at Liverpool.—Remarks.

"SHIP ahoy! thunder and blazes! pitchforks and shillalahs! Och! murther! murther! murther!—but we're done for now! I always knew they meant to kill us, but didn't think of being buried alive in sich an infernal hole as this. Liverpool, eh?—by Jupiter! not a soul of us will ever live to set foot on the blessed shore again. The land-sharks might as well have dissected us as to bring us here for the sea monsters to digest. Well—well—it's of no use to whimper or blubber about it; but the fishes won't get much of a feed out of me—that's one comfort. I'm nothing but skin and bones, and they'll have to be devilish hungry before they'll stomach my carcass.—I wonder if they've got any provisions aboard this old scow? Sich kind o' things must be scarce in Canada, from the way they've dealt them out to us. I'm so hungry, I could eat the chains on my legs, and a bushel of hot 'taters to boot. Och! murther! murther!—but I'll never see my poor wife again!"

Such was the soliloquy of J. J. McNulty, as I, with my poor mate Reynolds, was thrust—after having been twice searched on deck—into the hole of which the honest Irishman was complaining. At first it was so dark that I could see nothing, owing to our sudden transition; but while listening to the foregoing, and other expressions of horror, from various individuals who were groping about in search of berths, &c., the film gradually wore away, and object after object in our living tomb became dimly visible; and I confess

I was horror-stricken. The depth between decks was less than five feet. There were six berths on each side, five and a half feet long, and three and a half wide; and two across the ends capable of accommodating one person each. In the center was the hatchway, underneath which were two tubs for general purposes. The whole space, including berths, hatchway, &c., was about fourteen feet by twelve, in which thirty-four persons were to live during a voyage of 4000 miles. Eleven French Canadian convicts, thieves, highway robbers and murderers, were thrust in with us: fortunately but one or two of their number could understand or speak English. Indignant as we all felt at the insult, we had no redress, except in keeping them a distinct class as much as possible. Nine of their number occupied three of the side berths, the other two sleeping upon the floor, as did some of our own party. Being chained in pairs, the constant rattling of our irons added not a little to our other afflictions. Sixteen hours out of twenty-four, the hatchway was closed, depriving us of fresh air, and shutting out all light except what two small sky-lights afforded. The rations allowed us were, for breakfast, a mixture of boiled meat and potato, which the Frenchmen called *lobscous*; for dinner, boiled beef and a sea-biscuit—the former was always very salt, and the latter very mouldy; for supper, a kind of gruel made of oatmeal, which was called *stir-about*. Wooden bowls and spoons were graciously allowed us, to facilitate the fastidious business of devouring our food. Something less than a peck of dirt answered for seasoning, and gave to the delicious stuff an agreeable flavor; insomuch that seeing it, even by our dim light, was sure to beget the desire of eating, whether one had an appetite or not: in fact the first sight and smell of it caused me to vomit, and the same cause produced a similar effect during the whole voyage. The captain, who rejoiced in the appellation of Digby Morton, was a stout, jolly-looking fellow; but, as we soon learned, a desperate coward. He always managed to keep at a respectful distance from us when we went on deck, unless armed to the teeth; and even then seemed very wary in all his movements, lest we should possess

ourselves of his formidable weapons. The keeper, Morris,—a kind of half-civilized brute—styled himself “Captain of the watch,” which was composed of eight poor, ragged, and hungry-looking fellows, one of whom was stationed with his blunderbuss, pistols and sabre, immediately over the hatchway, day and night; and the better to impress our minds with a due sense of the strength and importance of this military force, from sunset to sunrise, “all’s well” was called by at least four *sogers* every fifteen minutes: as much as to say, “We are all here, and you had better keep quiet.” I learned, however, that two of these night-soldiers were nothing more than the sailors belonging to the vessel, who were made, while on watch, to personify the genuine heroes who were sleeping below.

No sooner had we made sail than sea-sickness commenced, and with myself only ended with the voyage. To describe this curse of the ocean would be a difficult task. An intolerable nausea and loathing of every object which is seen, touched, smelt, or tasted, is one of its effects; and the longer it continues, the more one hates and abhors—no matter how much of an egotist he may be—his own dear self. Another unpleasant effect is, that the sufferer takes a dislike to every thing he eats while ill; and the prejudice does not always leave an epicure, or a person who is naturally very sensitive, with the disgusting malady. After a period of seven years, I still retain dislikes and prejudices which I then acquired.

We drifted slowly down the river for two days, but on the third a fresh wind sprang up which soon increased to a gale, and hurried us out of the gulf. The weather was extremely cold, and our vessel was soon covered with ice. The fog was so dense as to render objects indistinct, a few rods from us; this is said to be generally the case in the gulf and off the banks of Newfoundland, at that season of the year. In passing the banks, the captain, as he afterwards acknowledged, lost his course, and was near running upon the rocks, the fog adding not a little to his embarrassment. The gale continued about twelve days, during which we averaged two hundred miles per day. Our sufferings during this time were horrible.

The hatches were battened down much of the time, and we had no fresh air; but the vessel, being heavily laden, frequently shipped heavy seas, and the water would sometimes pour down in torrents into our hole, cleansing the fetid air, but for which it would have indeed been intolerable. The two buckets before alluded to were only emptied once in twenty-four hours, and as the ship carcened their contents were not unfrequently thrown upon the floor. I lay in my berth, chained to my poor friend, Reynolds; and if I murmured against the decrees of Providence, or prayed for death, it must have been wrong in me to do so, but I fear that I did.

Before leaving the gulf, I went on deck to take, as I feared, a farewell look of my native land; and most of my companions did the same. Sad as our countenances looked, while gazing in mute despair upon the iron-bound coast of our native continent, our hearts were sadder, by far. The beautiful and expressive words of the poet came home to my heart,—

“ Yes, my native land, I love thee,
All thy scenes, I love them well;
Friends, connexions, happy country,
Must I bid you all farewell ?
Must I leave you—must I leave you,
Far in heathen lands to dwell ?”

During the gale, the weather was intensely cold, and the vessel was so thickly covered with ice as greatly to impede her progress. Every sailor and soldier on board was more or less frozen and disabled. This fact coming to the knowledge of our party, a plan was immediately entered into to take the vessel into our own hands and navigate her back into some port of the United States, where we could all go ashore—leaving the officers and crew to pursue their voyage when we had effected our purpose; and, as there was no one of any consequence to resist us, we hoped to do it without bloodshed. I was too ill to take any part in the affair, beyond that of encouraging the others. When, however, nearly ready for action, and another half hour would have changed our prospects and destination, the hatchway was suddenly shut down and barred, “all hands” were summoned on deck, and we

heard a great rattling of cutlasses and fire arms, above which sounded the voice of the valorous captain, trembling with fear or cold, and exhorting the sailors and soldiers to do their duty, if they would ever see their wives and sweet-hearts again. At length the hatchway was cautiously re-opened, and Messrs. Parker and Wait were ordered on deck by Morris; but no sooner were their heads above, than they were seized by the coat-collar and drawn up; those below being ordered at the same time to keep their berths, on pain of instant death. After a lengthy and loud altercation, they were thrust below with a new set of irons weighing fifty pounds, and the others were called up in turn. I was scarcely able, from weakness, to ascend the stairway, but this did not save me from a severe tongue-thrashing,—Capt. Morton charging me with an attempt to mutiny. Every free soul on board, except the Rev. Mr. Osgood, was present, heavily armed, and all appeared to be much frightened. In reply, I appealed to my debilitated condition, which forbade the idea of my taking part in such an undertaking, even were it in contemplation by my comrades, which supposition I treated with ridicule and contempt; but as most of our irons were discovered to be nearly sawn asunder, the affair put them on their guard, and we were closely watched during the remainder of the voyage. We were at first at a loss to understand how the captain gained his information; but on our arrival at Liverpool, he caused an exaggerated account of the suppressed mutiny to be printed, from which it appeared that the old traitor, *Jacob Beemer*, had betrayed us. His object in doing so, was to secure a pardon for himself. How well he succeeded will appear in subsequent chapters.

The weather grew warm in proportion as our distance from land increased, and the thick coat of ice which accumulated on the vessel while off the banks of Newfoundland, soon disappeared. A calm, and contrary winds, which lasted several days, succeeded the gale; during which our party were allowed, under certain restrictions, to spend half an hour on deck. On one of these occasions, an incident convinced me that there were little niceties in a sailor's

calling as well as others, which require intelligence, close observation and experience. The sky was clear, bright and fair; and there was scarcely a breath of moving air to break the smooth surface of the long and heavy swells which careened our barque slightly from one side to the other, causing the loose sails to flutter in the undulations which the motion occasioned. The watch were lounging about the fore-castle, singing ditties and *spinning yarns*; the captain and mate pacing the quarter-deck with heavy steps, and indulging in an occasional yawn, while the immaculate Morris was showing off his importance, by flourishing his old rusty sword in the air—an instrument which he handled as gracefully as raw hands at the trade always do. I was beginning to wonder how sailors could endure the *ennui* and inaction incident to their trade, when I noticed the captain glance his eye toward the sun, which was near his meridian, stop his promenade, and gaze intently at it for a few seconds, then survey the horizon to windward, and shout with a tone of voice which the sailors well knew how to interpret, “All hands on deck—up with the starboard watch—tumble up there, quick!”—In one minute from the time he first glanced at the sun, the whole crew were on deck and at their posts. The captain threw off his hat and coat, and taking hold with his own hands, encouraged his men to exert themselves to the utmost. In a short time all the sails were either close reefed or hauled down, with the exception of the main-sail, in which a double reef was also taken. Surprised at the rapidity of their preparation for a storm, I strained my eyes in scanning every part of the heavens, for the cloud or other phenomena which had given rise to it, but could detect nothing unusual. Scarcely, however, had all been made snug, when a heavy gale of wind suddenly burst upon us with awful fury, which but for the timely preparations, must have carried away our spars or capsized the vessel. I was pleased at the coolness and self-possession which the old veteran sailor evinced, as he directed the movement of his vessel through the foaming ocean; but *Master Morris* had sheathed his sabre, and dwindled from the mighty warrior into a pale-

faced nonentity. His cowardly heart fainted on the first appearance of danger.

About noon of the third Sabbath at sea, "Sail, ho!" was shouted by half a dozen voices on deck; and the cheering sound penetrated the dark, loathsome hole of our floating prison, causing an excitement and feelings akin to gladness in our still darker and more desolate hearts. The stranger was several miles to leeward when observed, and the captain shaped his course to speak her, hoisting at the same time the usual colors, which was soon answered by our new neighbor. In about two hours the captain called Messrs. Parker, Wait, Wixon, Reynolds and myself on deck, to see, as he said, "a Yankee ship." I was amused with the caution which he thought prudent to use on the occasion. We were placed in a position where our chains could not be seen from the decks of the stranger. The soldiers were stripped of their arms and accoutrements, so that we had no appearance of anything military, lest, as the captain said, "they should be frightened, and run away without speaking us;" thus measuring, according to the old proverb, "his neighbor's corn in his own half-bushel." Strict orders were likewise given that perfect silence should be observed by all; not even a whisper was allowed. The stranger proved to be a *Baltimore Clipper*, new, neatly rigged and copper bottomed.—The STARS AND STRIPES were gracefully floating from her mizzen-mast, and to my eye, appeared far prettier than the "*Union Jack*," which Britons glory so much in; while to my heart, that flag was dearer than life itself, under present circumstances; for it was the emblem of my country's greatness. Though my limbs were fettered with chains, I felt that I could glory in her glory, and rejoice in her strength; proud that she was free and independent, her flag respected on the ocean, and her name *mighty* among the nations of the earth; proud of her just laws, peaceful institutions, and the wonderful enterprise of her hardy sons; and grateful to God, who had raised her from a state of British dependence and thralldom, to her present state of power. The struggles of my forefathers, their devoted patriotism, incarcerations,

chains, sufferings, and blood poured out in torrents upon the altar of liberty, came up in remembrance before me; and when I reflected that I was suffering in the same glorious cause, I felt proud of my galling chains, and in a measure reconciled to my hard fate. I remembered, too, the struggling band of patriots in Canada, and prayed that He who had so wonderfully blessed my own native land, would deign to smile upon their feeble efforts, and that the flag of free and independent Canada might soon be seen floating in triumph upon the seas, respected by the unnatural parent then striving to crush her in the dust of the earth.

When within speaking distance, the sails of both vessels were hastily clewed up, and our captain with his speaking trumpet hailed her,—

“Ship ahoy!”

“Aye,” was the answer.

“Whence came you?”

“From Baltimore.”

“How long have you been at sea?”

“Twenty-three days.”

“Where are you bound?”

“To Rotterdam.”

“What is your cargo?”

“Cotton.”

“What is your longitude?”

“Thirty-three degrees and ten minutes west at 12 o'clock to-day.”

“Are you all well?”

“All well, thank you.”

Similar questions were put by the American captain to ours; but, in his answers, he took care not to tell what a *part* of his cargo was. The longitude of the two ships proved to be nearly the same; to ascertain which, is generally the chief object in speaking vessels. A slight variation from the true time in a ship's chronometer, is of the utmost importance to be known when near land. In long voyages much dependence must necessarily be put in this useful instrument. The American captain informed us that he lost his binacle,

quadrant and other articles, and his ship had suffered considerable injury in the gale which I have mentioned. I watched her as she resumed her course, until I could no longer see an object to remind me of home and country; and then went below with a heavy and irreconciled heart.

In a few days we saw Cape Clear, after which many vessels were always to be seen from our decks. I counted seventeen at one time; among them was a British man-of-war of 120 guns. Vessels of this strength are usually denominated, "*first-raters*." The blue hills of Wales soon made their appearance; and the land breeze, together with the prospect of a termination of our voyage, revived my drooping spirits. There was pleasure, too, in the anticipation of treading upon the shores of England, even though my limbs were fettered. I had, from my earliest recollections, a strong desire to visit the British Isles; but little dreamed that this was to be gratified under such peculiar circumstances. I had, too, a strong prejudice against the English, as a people, imbibed from reading their history, and that of my own nation, and desired not a little to witness with own eyes the faults with which my youthful imagination had clothed the English character. To what extent I erred will appear in subsequent chapters. Convictions of truth, when they uproot established prejudices and dislikes, are like the rays of the morning sun, dispelling the mists of night. They are grateful, too, to a mind not rendered callous by bigotry, and insensible by blind and culpable zeal in an unholy cause. Happy is that man whose heart is open to truth, even though it exalts his greatest enemies, and humbles himself in his own estimation; and thrice happy is he who possesses the will and independence of character to acknowledge the truth and reduce it to practice. National antipathies would soon become extinct as well as a thousand other evils, if mankind would but divest their minds of unjust prejudices.

Nothing of consequence occurred during the remainder of the voyage. On the 17th of December, the barque, "Captain Ross" anchored in Liverpool harbor. There was not one of our number that did not feel thankful to that Providence,

who had so wonderfully preserved our lives, and given us strength to endure our sufferings; which were so great that we deemed it almost impossible that all our lives would be spared to the end of the voyage. During the voyage, which was unusually short, (only twenty-five days—average voyages between Quebec and Liverpool being forty days,) I think I may safely assert, that I ate less than suffices a laboring man, of common appetite, a single day; and for twenty-one days in succession, I had no occasion to leave my berth for the purpose of parting company with the little I had eaten, unless it was to vomit, which I generally essayed to do, whenever the *lobscous* and *stir-a-bout* made their appearance. If the voyage had been much longer, I must have perished, as I was reduced to a mere skeleton, and so weak that I could scarcely stand.

CHAPTER XIV.

The Landing.—The Prison.—English Sympathy.—The Excellent Chaplain.—Prison Regulations.—The Prison Chapel.—Friends from London.—Removal of Eleven Prisoners to Portsmouth.—The Gale.—The Journey to London, &c., &c.

WE were, on the day of our arrival, landed at the wharf, and conveyed in coaches to the Liverpool borough jail—commonly known as “the old French prison,” from its having been used during the last wars between England and France, as a place of confinement for the French prisoners of war. A large crowd of people assembled at the wharf to get a sight of us when we landed; and I saw evidences of sympathy and kindly feelings in almost every face. To describe the sensations I experienced on the occasion would be impossible. I was prepared to meet with coldness, derision, and contempt, and had fortified my mind to go through the ordeal with becoming fortitude and dignity, and wear my chains as an American should, in the presence of his ene-

mies ; but certainly did not expect to see all look and act like christians and friends.

A great number of ladies and gentlemen called to see us the day after we landed; but in consequence of the strictness of the prison regulations, only a few obtained admittance. They were warm in their expressions of sympathy and good wishes; and were greatly shocked at the relation of our horrid sufferings on board the "Captain Ross." The prison surgeon, Doctor Archer, and the chaplain, the reverend Doctor Buck, spent some hours with us; and we were soon made to feel that we had come less to a land of strangers, than of friends. Both of these gentlemen proved friends indeed, especially the latter, who informed us that having heard, the previous evening, of the arrival of twenty-three state prisoners from Canada, his sympathies were immediately enlisted in our favor; that he had a circle of praying friends in his parish, who were in the habit of meeting together two or three times a week, for the purpose of praying for such objects as they deemed worthy; and believing our cases to be of such a nature, they had covenanted among themselves to continue their intercessions in our behalf, until Providence should open some door for our deliverance from bondage. Those of my readers who acknowledge a "*special Providence*," will see reasons to believe, from the circumstances which soon after occurred, that the supplications of these faithful servants of the Most High were not in vain.

My health immediately after we landed began to improve, and my appetite soon became exceedingly importunate for a larger supply of provisions than was allowed. The prison regulations were very strict; and, although we were not required to conform to the whole code, yet we were not a little annoyed at some of the *indispensables*, as the governor called them. We were locked into our cells at sun-down, to spend the night as we best could, upon mattress beds, which being spread upon a plank, or rather shelf, we found not quite so soft as feathers. The prisoners were either placed in separate cells, or three put in together. I inquired the reason for this rule, and was told, that a few years previous, two men

were locked up in the same eell, and in the morning one was found dead with marks of violence upon his person, which left no doubt with regard to the guilt of his comrade; but in the absence of any other testimony, the murderer escaped the penalty due to his crime; since which the present rule had been adopted.

The prison bell rang in the morning, about half an hour before day-light, when the turnkey opened the door of every cell, and ordered the inmate to get up and fold his bed.—There was but one way of doing the latter, and the least deviation possible subjected the blunderer to a repetition of his work. I folded my blanket and rug at least a dozen times before I learned how to do it “just right,” as the turnkey expressed himself. Every prisoner was likewise required to *holy-stone* and brush out his own cell. We breakfasted at 8 o'clock, dined at 12, and supped at 4. When the bell rang for our meals, we were required to form in a line, each man carrying his tin dish, and march in due order to an aperture in the wall, through which our separate allowances were handed us; but being in a ward by ourselves, and state prisoners, this ceremony was, after the first day or two, dispensed with. Oat-meal gruel was the usual breakfast and supper, with a small allowance of bread, so called; but it had none of the usual qualities of that article. The board of magistrates which controlled the prison was kind enough to allow us a pint of milk for breakfast in lieu of the gruel. Dinner consisted of a pint of soup one day, and a pound of vegetables and two ounces of bacon the next. The latter was of course preferred, and it was not unusual to hear some of our number say, “How glad I am this is not *soup-day*.” A person unaccustomed to the sea is certain to have a keen appetite at the end of a voyage. The sight of land begets a desire to devour some of its fruits, without a mixture of salt water;—more especially when one has been starving upon mouldy biscuit and salt pork for a few weeks. There was not one of our party who did not complain of hunger immediately after dinner.

The Sunday after our arrival we attended chapel. This

was a large apartment, capable of accommodating several hundred persons. The female prisoners were hidden from our view by a screen; but their voices, when they chanted the service, satisfied me that they were a set of termagants, and cured me of any desire to take a peep behind the curtain. The service was, however, well conducted; and the sermon—by the excellent clergyman before referred to—appropriate to the condition of the prisoners.

We lost no time in writing to some of the most influential reformers of the country, setting forth the peculiar circumstances under which we had been transported, and asking if something could not be done to test the legality of the proceedings. It afterwards appeared that, previous to the receipt of our letters, the parties addressed and others had formed an association for the purpose of investigating our cases, and, if practicable, delivering us from bondage.

Mr. Walker, clerk of W. H. Ashurst, Esq., solicitor, London, came down to obtain the necessary information, and he was soon followed by John Arthur Roebuck, Esq., M. P. The result was a determination to remove twelve of our number to London, under writs of *habeas corpus* in her Majesty's court of Queen's Bench. To my inexpressible joy I found my own name among the twelve; and the anxiety and excitement which I experienced in consequence formed a striking contrast to the apathy and indifference with regard to life felt for many months previous. Those of our number who were not included felt dissatisfied with the arrangement, as well they might; but I am not warranted in saying that blame could be attached to any of our party. It would have greatly rejoiced my heart if all could have shared with us the same investigation of their cases. On the 4th of January, they were sent, in irons, on board the steamship "Meteor" to be conveyed to Portsmouth. Our parting was a severe trial to all, who were as free from selfishness as they should have been upon such an occasion. On the 6th and 7th the poor fellows were nearly shipwrecked, in the violent storm which desolated the whole coast of England and Ireland; but, after putting back to port once or twice in

distress, the vessel reached her destination, and they were placed on board the "York Hulk" at that place. During the remainder of our stay at Liverpool, we were visited by many persons of respectability, by whom we were, without exception, treated with much kindness. Their conduct convinced me that they thought none the less of us on account of our bonds, and that they sincerely wished us a happy deliverance therefrom. While here, in accordance with the suggestion of our London friends, we demanded of the jailer, Mr. Bacheldor, a copy of the warrant under which he held us in custody, which was furnished accordingly.*

* PROVINCE OF LOWER CANADA,

(Seal.)

J. COLBORNE.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, &c., &c.,

To Digby B. Morton, Master of the barque, Captain Ross,—

Whereas, under and by virtue of a certain warrant of his Excellency, Sir George Arthur, K. C. H., Lieutenant Governor of our province of Upper Canada, and Major General commanding our forces therein, bearing date under his hand and seal of office at Toronto, in the said province of Upper Canada, the fifth day of November in the present year of our Lord, one thousand eight hundred and thirty-eight, and in the second year of our reign, Ara Anderson, James Brown, Randall Wixon, William Alves, Robert Walker, Leonard Watson, John Goldsbury Parker, Finlay Malcolm, Paul Bedford, Horatio Hills, Charles P. Walroth, James Gemmel, John Grant, John James McNulty, Samuel Chandler, Benjamin Wait, Alexander McLeod, James Waggoner, Garret Van Camp, John Vernon and Jacob Beemer, severally indicted and convicted in due course of law in the courts of the said province of Upper Canada of the crime of high treason,—and Linus Wilson Miller, George Cooley, William Reynolds and Norman Mallory, in like manner severally indicted and convicted of felony (a) and Edwin Merrit (b) in like manner indicted and convicted of the crime of murder, to all of which said persons and convicts our gracious pardon hath been extended upon condition nevertheless that they and each of them be transported and remain transported to our penal colony of Van Dieman's Land. for and during the period named in the patents of pardon so as aforesaid granted to the said convicts, and each of them: and whereas, the said several persons and convicts, are by and under a warrant in that behalf of his Excellency, Sir John Colborne, our administrator of the government, of our said province of Lower Canada, in that behalf, are now in the custody of our sheriff of the district of Quebec, in our said province of Lower Canada, in order to their transportation as aforesaid: and whereas, we being willing that the bodies of the said Ara Anderson, James Brown, Randall Wixon, William Alves, Robert Walker, John Goldsbury Parker, Finlay Malcolm, Paul Bedford, Horatio Hills, Charles P. Walroth, James Gemmel, John Grant, John James McNulty, Samuel Chandler, Benjamin Wait, Alexander McLeod, James Waggoner, Garret Van Camp, John Vernon, Jacob Beemer, Linus Wilson Miller, George Cooley, William Reynolds, Norman Mallory and Edwin Merrit, and of each and every of

(a) The provincial act under which American citizens were tried for treasonable offences designated the act as felony instead of high treason.

(b) Not sent to Quebec.

On the 9th we started, at 3 o'clock in the morning, for London by the rail-road cars; the governor and two turn-

them now in our common gaol of our district of Québec, should be directly delivered to you to be transported to Van Dieman's Land, being one of our penal settlements and foreign possessions, we have by our writ in that behalf, addressed to our said sheriff, lately commanded our said sheriff that he should deliver the said Ara Anderson, James Brown, Randall Wixon, William Alves, Robert Walker, John Goldsbury Parker, Finlay Malcolm, Paul Bedford, Horatio Hills, Charles P. Walroth, James Gemmel, John Grant, John James McNulty, Samuel Chandler, Benjamin Wait, Alexander McLeod, James Waggoner, Garret Van Camp, John Vernon, Jacob Beemer, Linus Wilson Miller, George Cooley, William Reynolds, Norman Mallory and Edwin Merrit, and each and every of them, to your custody without delay, to be transported as aforesaid. We therefore command you receive the said Ara Anderson, James Brown, Randall Wixon, William Alves, Robert Walker, John Goldsbury Parker, Finlay Malcolm, Paul Bedford, Horatio Hills, Charles P. Walroth, James Gemmel, John Grant, John James McNulty, Samuel Chandler, Benjamin Wait, Alexander McLeod, James Waggoner, Garret Van Camp, John Vernon, Jacob Beemer, Linus Wilson Miller, George Cooley, William Reynolds, Norman Mallory and Edwin Merrit, and each and every of them from our said sheriff of our said district of Quebec, and that you do forthwith transport and convey or cause to be transported and conveyed the said Ara Anderson, James Brown, Randall Wixon, William Alves, Robert Walker, John Goldsbury Parker, Finlay Malcolm, Paul Bedford, Horatio Hills, Charles P. Walroth, James Gemmel, John Grant, John James McNulty, Samuel Chandler, Benjamin Wait, Alexander McLeod, James Waggoner, Garret Van Camp, John Vernon, Jacob Beemer, Linus Wilson Miller, George Cooley, William Reynolds, Norman Mallory and Edwin Merrit, and each and every of them, to such part of the United Kingdom of Great Britain and Ireland, called England, as to us may seem fit, to the end that the said Ara Anderson, James Brown, Randall Wixon, William Alves, Robert Walker, John Goldsbury Parker, Finlay Malcolm, Paul Bedford, Horatio Hills, Charles P. Walroth, James Gemmel, John Grant, John James McNulty, Samuel Chandler, Benjamin Wait, Alexander McLeod, James Waggoner, Garret Van Camp, John Vernon, Jacob Beemer, Linus Wilson Miller, George Cooley, William Reynolds, Norman Mallory and Edwin Merrit may be thence again transported to our penal colony of Van Dieman's Land, according to the condition in our aforesaid pardons severally and respectively in that behalf contained, and that you do there deliver the bodies of the said Ara Anderson, James Brown, Randall Wixon, William Alves, Robert Walker, John Goldsbury Parker, Finlay Malcolm, Paul Bedford, Horatio Hills, Charles P. Walroth, James Gemmel, John Grant, John James McNulty, Samuel Chandler, Benjamin Wait, Alexander McLeod, James Waggoner, Garret Van Camp, John Vernon, Jacob Beemer, Linus Wilson Miller, George Cooley, William Reynolds, Norman Mallory and Edwin Merrit, and the body of each and every of them, into the custody of such person or persons as may be lawfully authorised to receive the same.

In testimony whereof, we have caused these our letters to be made patent and the Great Seal of our said province of Lower Canada to be hereunto affixed.

Witness, our trusty and well-beloved Sir John Colborne, Knight Grand Cross of the most honorable military order of the Bath, and of the Royal Hanoverian Guelphic Order, Commander in Chief of our forces in our province of Lower Canada, &c., &c., &c.

At our government house in our city of Montreal, in our said province of Lower Canada, the seventeenth day of November, in the year of our Lord one thousand eight hundred and thirty-eight, and in the second year of her Majesty's reign.

By command,

D. DALY, Secretary of the Province.

keys accompanying us. We were again hand-cuffed and conveyed in coaches to the rail-road depot, two and a half miles from prison. The city of Liverpool was lighted with gass, which in brilliancy far exceeded any other that I had ever seen. A pin might have been easily seen in any of the streets which we traversed. The streets were generally wide, paved with stone, and very clean, and the buildings superior in outward appearance. We occupied a car by ourselves, the governor riding with us, and very kindly pointing out every thing of interest on the road. Passing rapidly the towns of Warrington, Stafford and Wolverhampton; we arrived at Birmingham about noon. The country for about forty miles from Liverpool appeared to be very poor and sterile. The snow having fallen several inches in depth during the night, we were delayed some time in consequence. Men were busily employed in sweeping the rail-road track. We stopped at Birmingham two hours, during which the inhabitants, as usual, manifested much curiosity to see us. Being noted for radicalism, they were not backward in showing their sympathy for our misfortunes, and talked as much treason while we were there as would have insured the conviction of the reformers in both the Canadas. Their far-famed city appeared to be all noise, smoke, bustle and confusion; and, as one of my companions remarked, "If business was not done there, they certainly made all the *motions*." The rail-road buildings, cars, engines, &c., of the place, far exceeded, in magnificence, any thing of the kind in the United States.

The other towns on our way generally looked somewhat ancient. There was something to remind the beholder, in almost every object of any importance, of the days of yore. Old castles, parks and villas, were ever and anon flitting past us as we swiftly sped on. We were occasionally involved in darkness in the tunnels, two of which were nearly a mile in length. In passing in and out, the transition was so sudden as to bewilder one's senses for the moment, and when the trains met in these immense caves, the reverberations were quite deafening.

The country for one hundred and fifty miles on the road, was apparently very rich and well cultivated. But the farm-houses and thatched cottages of the tenants, corresponded well with the well known history of the common people of England. Every thing bespoke the opulence of the lord who fattened on the spoils of his vassals. The wrongs of the great mass of England's population, many of whom labor from twelve to sixteen hours each day for a bare pittance, while the profits of their over-taxed nature go to support the aristocracy in their extravagance, cry aloud to heaven for redress; nor will the wail of the starving millions remain forever unheard. The retributions of an offended Deity must, sooner or later, be visited upon the oppressor.

We reached the great metropolis about 7 o'clock, P. M. Coaches were procured by our keepers, and we were conveyed through streets teeming with life and activity, though but poorly lighted compared with those of Liverpool, to her *gracious* Majesty's prison of NEWGATE. The massive doors were unbarred to welcome us, and we were again buried in a living tomb—the receptacle of the poor, the lost, the ruined, the doomed of earth. To pass so suddenly from the bustle of life, the splendor and magnificence of the greatest city in Europe, to the cold cells of the accursed prison, where sighs, wailings and curses were so terribly blended together, may be likened to jumping from Empyrean into the lowest hell.

CHAPTER XV.

Newgate Prison.—Treatment.—The Chaplain.—Chapel.—The English Felons.—The Lawyers.—Attendance at the Court of Queen's Bench.—Statue of CHARLES FIRST.—Charring Cross.—Westminster Abbey, its History, &c.—Statue of GEORGE CANNING.—Remains of Lord Byron.—Westminster Hall.—The Court.—Arguments of the Counsel, &c.

THE sensations I experienced on finding myself an inmate of Newgate, are indefinable. In all my youthful aspirations for fame and glory attendant on the patriot campaign, I had never dreamed that such distinguished honors were to be conferred upon me. I had, indeed, heard of the illustrious house of Newgate,—and who in the civilized world has not?—but, in the simplicity of my heart, never even aspired to a seat in it. I should as soon have dreamed of being seated upon the throne of England. Yet to the humblest individual dame Fortune is sometimes prodigal of her favors.

Our accommodations in this great emporium of crime and misery were decidedly better than at Liverpool. We were confined in two large, airy rooms; were allowed the privilege of walking in the yard once or twice a day, had good rations and comfortable bedding. The officers of the prison were exceedingly kind and obliging, and we were made to feel ourselves quite at home. The governor, whose name was Cope, was a jolly old gentleman, fond of fun, and always wore a smile upon his countenance. The chaplain of the prison, the Rev. James Carver, was at the first rather reserved when he visited us; but in due time we became better acquainted, and he proved an excellent friend. The prejudices which I had been accustomed to feel toward the clergymen of the Church of England, gradually wore away, as I had an opportunity of seeing and hearing them frequently.

Their conversation, principles, and zeal in their calling, were in general worthy of the minister of the gospel. There can be no doubt but that within the last half-century, a great change has taken place for the better in the established church, and that true godliness, in the full meaning of the term, has increased an hundred fold, not only in the clergymen but laity. If the reputation the former enjoyed abroad was just, there was certainly great need of a change.

Prayers were read and the Scriptures expounded in the prison chapel, morning and evening, by the reverend chaplain. The service, which generally lasted an hour, was well conducted and interesting. The chapel was large enough to accommodate one thousand persons, who were, of course, prisoners, and many of them had never been within a chapel since their christening. Nine-tenths of Mr. Carver's congregation throughout the year are almost as ignorant of the Bible as the heathen who never heard of such a book. Although a General Jail Delivery is held monthly at the Old Bailey, the prison is generally full before the sessions commence. Those who are convicted are immediately sent to the penitentiaries or hulks for transportation, according to their respective sentences; and thus during the six months of our stay in Newgate, there was a monthly change of faces in the chapel. We were seated by ourselves in the gallery, which commanded a view of most of the congregation; and as we were kept entirely distinct from the English prisoners, not being allowed to speak to or come in contact with them in any way,—which, of course, we had no desire to do,—this was the only opportunity we had of seeing those miserable men.

As far as possible the treatment due to state prisoners was extended to us, and in all the dealings of the authorities with us, a due regard to the nature of our offences was observed. We were informed that the dilapidated condition of the old Tower of London alone prevented our confinement, during our stay in England, within its venerable walls, where state prisoners were usually kept of yore; and that we were not kept in Newgate from any wish on the part of

the government to treat us as persons whose crimes, from their moral turpitude, degraded them in the estimation of the public. Indeed, the inspectors of the prison were directed by the government, soon after our arrival, to ascertain whether we were kept entirely distinct from the English felons. We were ever made to feel, in our intercourse with the numerous strangers and friends who visited us, that in their estimation we were neither degraded or debased.

Our inestimable friends, the lawyers, were early and constant in their attendance, inspiring us with their own sanguine hopes and wishes; and the day of deliverance from bonds and imprisonment appeared to be near. Our hearts were warmed with gratitude toward them, and well might we feel thus; for in the language of scripture we could say, "We were an hungered, and ye gave us meat; we were athirst, and ye gave us drink; naked, and ye clothed us; sick, and in prison, and ye visited us." Seldom has there been a more striking instance of generous and disinterested charity than was exhibited by these men throughout the whole anxious period of our incarceration in Newgate, and I trust that all our party realized the obligations which can never be canceled on our part.

On Monday, January 14th, we all attended court, handcuffed in pairs. We were driven in coaches, Mr. Bacheldor having us in charge, through some of the principal streets in London, to Westminster Hall, a distance of nearly two miles. On our way we passed Charring Cross, where we saw the fine equestrian statue of Charles I., in bronze, executed in 1683, by Le Soeur, for the Earl of Arundel. It stands upon a stone pedestal seventeen feet high, executed by G. G. Gibbon. During the civil wars this statue fell into the hands of Parliament, who, desirous of removing every vestige of the weak but unfortunate prince whom they had sacrificed, ordered it to be sold and broken up. The purchaser was one John River, a brazier, who produced some pieces of broken brass, &c., in token of his having complied with the conditions of the sale; and also sold to the cavaliers handles of knives, forks, &c., as made from the statue. In

this way he deceived both the Parliament and loyalists, for he buried it unmutilated; and, at the restoration of Charles II., dug it up and sold it to the government, greatly to his own advantage, Parliament being then as desirous of preserving as they before were of destroying it. It was long the custom on the 29th May, the anniversary of the restoration, to deck the statue with oaken boughs.

Charring Cross derives its name from having been anciently a village, detached from London, called Charring; and from a stately cross, erected by Edward I., to commemorate his affection for Eleanor, his deceased Queen. The cross occupied the last spot on which her body rested in its progress to sepulture in Westminster Abbey, where her remains are now interred. The other resting places of her sumptuous funeral were dignified with similar edifices. In 1643 it was pulled down and destroyed by the populace in their zeal against superstitious edifices. Being built of stone in an octagonal form, had it been left to the mercy of old Time, it would have long graced the city of London as an ancient edifice.

Westminster Abbey stands on the opposite side of the street from the hall of the same name; and most ardently did I desire to tread the hallowed precincts of that ancient and venerable pile, consecrated with the mortal remains of England's great and good men for so many centuries. If there is a spot upon the face of the earth calculated to call forth the best and most exalted feelings of an Englishman, it is this.—Independent of the use to which it has been appropriated, its history is interesting. The ground upon which it stands was anciently part of an island, formed by a branch of the river Thames, called "Isle of Thorns," from the great number of thorn shrubs or trees that grew upon it. King Sebert was the original founder of the Abbey. In the year 605 he was baptized, and to prove the sincerity of his conversion, built a church here and dedicated it to St. Peter. Great pains have been taken in all the repairs, enlargements and changes which it has undergone, to preserve his remains and those of his Queen, Ethelgotha, and to replace them in the most honor-

able place in it, on account of his being the original founder. A singular fable was invented in regard to its consecration, by the monks, who pretended that the ceremony was actually performed by St. Peter in person; and toward the middle of the thirteenth century the brethren of the monastery sued the minister of Rotherhite for the tithe of salmon caught in his parish, on the ground that St. Peter had given them this right when he consecrated their church.

After the death of Sebert the church fell into decay, and was afterwards restored by Offa, King of Mercia; but was again almost destroyed in the course of the Danish invasions. King Edgar, at the instance of St. Dunstan, in the year 969, once more restored it, and endowed it with lands and privileges; but it was Edward the Confessor who, nearly a century after this, raised it to the consequence which it has since that time maintained. Having fixed upon it as his burial place, this monarch spared no pains to render its structure the most magnificent in his dominions. It was completed in the year 1065, and on the 18th December, the day of the *Holy Innocents*, was dedicated. About this time the King was taken ill of a malady which proved fatal, and on the 12th January his body was interred with great pomp and ceremony, before the high altar. The Abbey has since been the usual burial place of his royal successors, and of the great statesmen and illustrious personages. Here, also, on Christmas day the year following, was performed the coronation of William the Conqueror; and in the same place has been crowned, with the exception of Edward V., every prince who has reigned in England since, until a late period.

The chapel, dedicated to the Virgin Mary, by Henry VII., toward the close of the fifteenth century, may challenge competition, in elegance, richness of ornament, and almost gem-like beauty and perfection, with any specimen of architecture in the world. The eastern end is surrounded with chapels, twelve in number, all of them being finished in the most magnificent style. Here, also, is the famous stone, brought from Scone, in Scotland, by Edward I., in 1296, and upon which the English Kings have been since crowned. But the

greatest curiosity and principal attraction to visitors in general, are the numerous tombs, costly and well executed, of kings, queens, nobles, statesmen, warriors, poets, and all the most illustrious persons for ages past, who have swayed the sceptre over and influenced the destinies of millions of their fellow men during the eventful period of their respective lives. Can such a field be trodden by any reflecting man, with light and careless footsteps? He is greatly to be pitied, if not, indeed, despised, who can wander over such ground without emotion, or calling forth those feelings which make us wiser and better.

The colossal statue of George Canning, recently erected in Palace yard, is simple, but grand. The likeness is said to be excellent. It is placed on a granite pedestal, bearing the inscription, in large letters, of that illustrious statesman's name.

I can not dismiss this subject without observing, that several attempts have been made to place the remains of the late Lord Byron in the burying ground of the Abbey, but the strenuous opposition of the bishops, in the House of Lords, has hitherto prevented this act of justice to the memory of that great and talented man. The infidel principles, so unhappily introduced into some of his poems, is the alleged cause of this hostility on the part of the church. The last effort made by Lord Byron's friends, was, if I mistake not, in 1842, when a discussion, not much to the credit of the bishops who opposed it, took place; two of their number being openly charged in the house, by a noble lord, with gross inconsistency of conduct, inasmuch as each allowed the most serious vices in his diocese, and it was boldly asserted that one of these gentlemen owned several houses which were tenanted by women of ill fame, he receiving the rent, with an insinuation that he enjoyed a tithe of *something else*. Of the truth of these charges, however, I profess to know nothing, beyond the reports of the House of Lords as they appeared in the English newspapers.

Westminster Hall, in a wing of which her Majesty's court of Queen's Bench is held, is likewise a splendid edifice. It is in this hall that the Kings and Queens of England have been

crowned in modern times; and it is frequently used for festivity on great occasions. It is neither so ancient or costly as the Abbey, within a few rods of which it stands, but it is considered the largest and most magnificent hall in Europe. We enjoyed a very good opportunity of seeing it, having to enter the court through the main hall.

We invariably attracted a large concourse of people, when we entered or retired from court, who manifested their sympathies and good wishes by cheering us. This amply repaid us for all the groans and hisses of the ragged Canadians at Montreal, the previous year.

The court room was densely crowded with barristers and spectators, about 150 of the former, dressed in their gowns and wigs, being in attendance. When the judges entered every person in court arose, this being the usual custom, as a mark of respect. Clothed in their official robes, wigs, &c., their appearance on the bench was somewhat venerable and imposing, being men of advanced age, and the deep furrows upon their high foreheads indicating superior intellect, cultivated by the lucubrations of many years. Lord Denman presided as Chief Justice; Mr. Justice Williams, Littledale and Coleridge took their seats by his side. Mr. Justice Halliburton, Chief Judge of Nova Scotia, and the author of the celebrated and humorous *Sam Slick*, Lord Howick, Mr. Hume, Mr. P. Thomson, and other distinguished gentlemen whose names I did not learn, were present. The Attorney General, Sir John Campbell, a Scotchman, the Solicitor General, Sir F. Pollock, and Mr. Wightman appeared as counsel for the crown, and Matthew Davenport Hill, John Arthur Roebuck, and Thomas Falconer, Esquires, for us.

The returns by the jailer of Liverpool having been read, the Attorney General stated that in the course of the discussion he should feel it his duty to draw the attention of the court to the question, as to whether this was a case in which there would be a writ of *habeas corpus* issued in vacation by a single judge; and the entire day was accordingly taken up by the counsel for the crown in arguing the point;

evincing a determination to throw every possible obstacle in the way of a fair investigation of our cases.

On the 15th we again attended court. Lord Denman, after a short consultation with his learned brothers, said they had considered the objections which had been made yesterday as to the return of the writs, and they were of opinion that it was not necessary to hear the arguments on the other side; for they had decided to be bound by a practice which had existed and been sanctioned by the courts for a great number of years. In 1758 the question came before the judges, and indeed had been decided before that time in various cases. In that year, however, a bill was introduced into the House of Lords to remedy some defects relative to writs of *habeas corpus*, and on the point in question seven out of the ten judges who were present gave their opinion as he (Lord Denman) now stated it. Chief Justice Wilmot at that time observed, that at least for 80 years the practice had been similar, and he referred to cases of even earlier date. He (Lord Denman) and his learned brothers were aware that they had a right to consider these questions, but to them it would seem like tampering with the great remedy which the writ of *habeas corpus* gave to the subject, if they were not to abide by the decision of the judges in the case he had spoken of, and allow writs to be issued in the vacation. At the time to which he referred, seven judges out of ten had so decided it, and although Mr. Justice Foster was prevented from attending, he was of the same opinion, and wished indeed to carry the writ of *habeas corpus* further. This manifested the practice at that time, and it had been well ascertained since, and the act alluded to being dropped, was another proof of such opinions being well founded.

Mr. Hill was then proceeding to address the court, when Lord Denman inquired whose case he was going to take up first?

Mr. Hill replied, that of Watson; and he at once would move the discharge of Leonard Watson, on reading the return now filed in that court. This was a case in which the prisoner was not convicted, nor stated to be convicted. It was

one of a class of which there were nine persons ; and there was another class, in which there were three persons. He would confine his motion, however, to the case of Leonard Watson ; and, although it was the wish of his learned friend and himself to take up as little of the time of the court as possible, yet he would guard himself against being considered as arguing the cases of all the prisoners in the case of Watson, because it was possible there might be different arguments applying to the different cases, although the main one would probably be contained in this. Their lordships would perceive from the return in question, that a vessel appeared in the port of Liverpool—a private vessel commanded by a private person, and containing a large number of persons held by the master in a state of confinement ; that the master elected to put those persons under the custody of Mr. Bacheldor, the jailer of Liverpool ; that he (the jailer) elected to receive them and returned as the cause of their detention that he held them for the purpose of being transported to Van Dieman's Land as soon as the means were prepared for their transportation. That was the statement of facts as far as the jailer told them of his own knowledge. Under these circumstances the prisoners applied to the judges for a writ of *habeas corpus*, and a return was made which attempted to set forth, as it must, the cause of their capture and detention ; that was to say, it justified the preceding statement to which he had just alluded, and to which he referred their lordships. It had been a subject of most anxious consideration with his learned friends and himself as to what was the proper course for bringing this case before their lordships ; but who was the person who made this statement ? Was this a matter in which the minister was a well-known public officer of some degree ? No : but it was the jailer of Liverpool who made this statement, a statement which required the knowledge of a great number of facts, but of which he had no cognizance at all, and to which he bound himself on hearsay only, and not by oath. Such a statement was nothing more than a piece of pleading, and of no more authority or evidence than a mere plea to detain or distress the prisoners ;

and were their lordships to be satisfied with such a statement—to consider it, as his learned friend (the Attorney General) had said they were, as a statement of what had occurred in Upper or Lower Canada, or elsewhere; or were they to go into the real facts of the case, and show how repugnant they were, as he believed they would be found, to the return which had been made? There were high authorities that they should do this, and as it was a principle of the *habeas corpus* that the King by his judges had a right to know when any subject is imprisoned, he had a right also to know that the judges had the means of not merely an unauthenticated statement, but the real facts of the case laid before them. And in this, too, he might again quote the authority of Mr. Justice Foster and other learned judges. This might not be unencumbered with difficulty, but if ever there were a necessity for such a course, it was at that moment, for so bad did the return appear to him, both from what it admitted and what it omitted, that it would be impossible to form a correct decision upon that alone. Casting that aside, however, for the present moment, he would argue as if the return were perfect as to the facts, according to the legal principles of the writ, and that the jailer's statement was entirely correct.

The first objection he had to make to the return was, that there was no conviction either set forth or averred against Watson. There was a statement of his being transported for life to Van Dieman's Land, but no conviction was mentioned. It was said by the Attorney General that in no case was this necessary; but there must be and was in this something equivalent to a conviction set forth in the return, pursuant to the statute of 1st Victoria, relating to Canada, which, after reciting that it was an act to enable the governor of the province to extend pardon in certain cases to persons connected with the late insurrection, and stating that it was desirable to extend the mercy of the Crown to certain persons who were therein named, that on petition of any person charged with high treason referred to the Lieutenant Governor before arraignment, enacted "that it shall and may be lawful for the governor, if he thinks fit, to grant a pardon

on such terms and conditions as may appear right, which pardon is to be under the great seal of the provinces, and is to have the same effect as attainder as far as is required for the forfeiture of estate and property, both real and personal." Now, the return went on to say that the prisoner had petitioned, and that a pardon was granted, that pardon being transportation for life. The Attorney General had argued that that state of things was equivalent to a conviction, but then he must show that the conviction was necessary. He might perhaps be stating the law against himself, when the *onus* was not on him to do so; but the Attorney General seemed to think all had been done that was required by the statute to which he (Mr. Hill) referred, which was the 5th of George IV. But he submitted to their lordships that if the jailer did by right hold persons in detention, that right must have been conferred by the imperial Parliament, and not by a provincial statute. Now the statute of 5th George IV., as if it contemplated the case of the prisoners, was framed in a most guarded manner to secure and not invade the liberty of the subject. He would refer their lordships to the 5th of George IV., c. 84, s. 17, which began by reciting that "whereas by the laws in force of some parts of his Majesty's dominions not within the United Kingdom, offenders convicted of certain offenses are liable to be punished by transportation beyond the seas, and other convicts adjudged to suffer death in such parts of his Majesty's dominions have received or may receive his Majesty's most gracious pardon on condition of transportation beyond the seas, and there may be no means of transporting such convicts to any of the places appointed by his Majesty in council, in that behalf, without first sending them to England, be it therefore enacted, that when any convict, adjudged to transportation by any court or judge in any part of his Majesty's dominions not within the United Kingdom, or any convict adjudged to suffer death by any such court or judge be pardoned on condition of transportation, have been, or shall be, brought to England in order to be transported, it shall and may be lawful to imprison any such offender in any place of

commitment provided under the authority of this act, until such convict shall be transported, or shall become entitled to his liberty; and that so soon as every such convict shall be so imprisoned, all the provisions, rules, regulations, clauses, authorities, powers, penalties, matters and things aforesaid, concerning the safe custody, confinement, treatment and transportation of any offender convicted in Great Britain shall extend, and be construed to extend, to every convict who may have been, or may be hereafter, adjudged to transportation by any court or judge in any part of his Majesty's dominions not within the United Kingdom, and to every convict adjudged by any such court or judge to suffer death, and pardoned, on condition of transportation, and brought to England in order to be transported, as fully and effectually to all intents and purposes, as if such convict had been convicted and sentenced at any session of jail delivery, holden for any county within England." What description of persons did this apply to? To convicts, and to convicts only. The term "convict" was perfectly well known and perfectly defined in our law, and yet by anticipation, as it were, of some such case as the present, the clause went on to say, "convicted by any court or judge." The necessary person, therefore, must be a convict; but presently he would show their lordships that that was not the only condition.—But how was it manifested that he was a convict? Would their lordships rely on his learned friend's saying he was something equivalent to a convict? It appeared he was something else, which something else was equivalent to a convict, and the return clearly rested on that. But if the case rested there, it was only made out in the face of all law, for the law of England knew no equivalents. The person subject to this statute must be nothing greater nor less than a convict; the identical person must be such, and whatever else he was was unimportant if he were not that. The statute was, indeed, tautological in this respect, and hence in favor of liberty, and said "convicted by any court or judge." Now what court or judge had interfered here? How was this man a convict?—And yet he is sent here by virtue of a proceeding which is

not complete until your lordships, by a vigilant scrutiny, shall have examined it and pronounced it to be so. It appears by the return that the prisoner was in jail. It appears also he presented something which the jailer calls a petition; that that petition contained something which the jailer adjudges a confession of guilt, and that, too, before arraignment, and all care is taken that the prisoner should not be seen in or about a court of justice for any purpose whatever. All publicity is avoided, and yet on this petition, and what is called a confession of guilt, pardon is to be granted. All is to be done in private, whilst the prisoner is not master of his own actions. But the law is, that no contract taken with surprise whilst the party is in prison, is valid; and yet here the petition must be presented whilst he is in prison, so that the governor may obtain what is called his assent to punishment short of death; that is the benefit conferred on a prisoner by this statute. It is quite clear that any punishment short of death may be inflicted, but the punishment in this case must necessarily be only short of death. If this be a pardon we may say that Lord W. Russell was pardoned, when he was saved from being disemboweled and horribly mutilated, and simply and shortly executed, without any of those enormities of lenity which the wisdom of our ancestors added to their executions. Does the case of the prisoner look like a trial? Had this man any benefit of English law, or law of any civilized country? He would make no political remarks. He was there to argue for the prisoner, but as a lawyer he would say, there was nothing in this case to be ascribed to any judge or court of law. It was, indeed, a libel on a judge to call the man who acted under that statute as such; it was a degradation to the title to put him on such a footing. But if conviction were necessary, would something tantamount or equivalent to it do instead? This was a new term in law, and the liberty of the subject, which ought to be extended, was to be restricted in the narrowest terms. The writ of *habeas corpus* was only to be obtained in term time, or, if issued in the vacation, not returnable in term. The liberty of the subject was to be restricted whilst the liberty of punishment was to be enlarged.

But what remedy could a subject have, if this equivalent, wrong as it was, were admitted? If the pardon turned out unfounded, what was there to bar him against a fresh charge? Try it by any of the legal incidents, and yet it would be found to answer to the test of none. He therefore maintained and believed this was not a conviction.

His second objection was, that there was no judgment of transportation to be found in the return, nor averment of such judgment, nor even hint of it. It was well known, and it was an old English principle of our law, and for this he might run back for example to the antiquarian supporters of our liberties to satisfy his learned friend—it was one of the most ancient principles that no man could suffer punishment by his own consent or contract. Lord Hobart had not only so laid it down, but continued that throughout the world it would be found to be acknowledged that no man in prison consenting to be hanged could remove the guilt from a person unauthorized performing such an execution. The principle was as well understood as the principle of commutation of punishment adopted in our law. The King would have a right to execute for treason, but no right to commute the punishment of treason to transportation; and, therefore, in the slow advancing lenity of our law in commuting the punishment of death to imprisonment or transportation, it became necessary to give an independent authority for it, and to state by whom that power and to what extent it was to be exercised. If, then, these prisoners were legally convicted of treason, the second part of the statute of the 5th of George IV., independent of the first, must prevail; for although it may not be adverse to the wishes of the prisoner to change the punishment, yet there must be a power independent of him, not derived from him, in order to effect it. That was his second objection. But had the governor any legal power to award transportation? His humble proposition was, there was no proof, and he believed the contrary to be the fact that the governor had such power. If he had any, it was from a provincial statute. That was clear. If he had it at all, it was by letters patent. But this was not

set out. The court were aware that by an old statute of Henry VIII. the power of pardoning is incommunicable, and it has been considered somewhat doubtful (but he would not controvert the idea then) whether in a colony the King could communicate it either, and if so, it could only be by letters patent from himself. Now, the jailer was not an officer whose power had been so defined by law; but he was an attorney of the King, exercising certain powers of the King, and the letters patent are his power of attorney, and they will extend from the beginning to the end of his authority. Where one governor has great power, another has but little authority. The governor of India, for example, had great powers, whilst the governor of St. Domingo was much restricted; and the powers varied according to their constitution, being different in the chartered colonies from the old proprietary ones. Their lordships must look, moreover, to the statute for the powers of the governor; for a question arose in what cases the governor had power by the consent of the provincial Parliament, and not conferred by the Crown. Now, the pardon was to be granted only when the governor thought proper; but, without considering the meaning of that phrase, he would ask whether such power could be conferred in such a manner as he had just referred to. The words "on certain conditions" were parenthetical, and conferred upon the governor a power to invent any punishment he pleased. Suppose he considered that the governor could not inflict death, the simple punishment of death, were these words then to invest the governor of Upper Canada with a power which our Kings in the worst times of our legislation could not have exercised? Is he to say, "I grant you, Leonard Watson, pardon, on condition that you submit to the punishment which is awarded in cases of assault within the precincts of a royal palace, viz., having your right hand cut off?" What was there to limit him from this? If he had the power of transporting for life, as exercised in the present case, why should he not have power also to say, "I grant you pardon, on condition of your submitting to the rack for a great number of hours?" Why might he not

exhaust his ingenuity in inventing different kinds of punishment, all within the compass of this act, if he were invested with any power at all? How was this attempted to be proved by those who framed the return? There was (and he was happy in being able to say so) an averment in it that the prisoner had assented to the pardon; but it showed that the governor rested on the contract or consent of the prisoner, and that he believed was the construction of the act. But if you find it dependent on the contract or consent of the parties, then must you find it illegal. His learned friend was in this dilemma — either he must state that within this general power the governor has a right (whatever the prisoner has done) to invent and apply upon any prisoner “as he thinks fit,” or, if he sits easier on the other horn of the dilemma, that the governor has not forced a pardon on the prisoner, but that the prisoner accepted it, and is therefore stopped from complaint. He next submitted to their lordships, that even supposing there be this power, and that a provincial Parliament could confer sufficient power on the governor to transport for treason, yet his learned friend must explain by what means the governor had the power of transporting beyond the limits of his own province. If he could transport to Van Dieman’s Land, might he not have a right to send them to Nova Scotia, to Calcutta, or Bermuda? That question arose, and his learned friend must not refer to the statute of the 5th George IV. for any authority, because their lordships would perceive it clearly amounted to this — that where there was an antecedent power to transport *extra fines*, authority in England shall, by aiding and assisting, be given to carry such antecedent authority into effect. That act assumes throughout, as appears by the recital of the sections, that there is a right to bring such persons to England, and that on failure of such authority they must be set at liberty in England. There have been cases in which transportships, bound for New South Wales, have been obliged, by stress of wind and weather, to put into Van Dieman’s Land; but in that colony there was no power or authority to treat the persons on board as convicts, and the statute of George

IV., and William IV., was accordingly passed, which, after reciting the expediency of such a measure, and providing some remedy, gives a power to each colony respectively to treat as convicts persons sent to the others respectively, when obliged to put in there by any necessity. The next objection was, that, assuming there was legal authority to transport the prisoner at all, that such transportation was not legally conducted. The Court would refer to the statute of George IV. and William IV.

Lord Denman.—You cited only the statute of George IV. before.

Mr. Hill.—It was by mistake, and the statute he referred to was the statute of 11 George I., and 1 William IV., c. 39.—His objection was that although the transportation might be well begun there was miscarriage in the conduct of it. The return averred that in order to carry the conditions of the pardon into effect it was necessary to send the prisoners to Quebec in Lower Canada; then an averment of such necessity was made by Mr. Bacheldor, jailer of Liverpool, which he believed existed nowhere except in that person's own imagination: and the return further says, that the governor of Upper Canada by his authority and warrant, sent the prisoners into Lower Canada—not to Quebec, but Lower Canada; and then all notice, all hint of the authority of the governor of Upper Canada is at an end. What that governor directed to be done with them does not appear. The next statement in the return is that the governor of Lower Canada, without any communication with the governor of Upper Canada, without any warrant or knowledge of the subject of any kind, then thought proper to put the prisoners under the sheriff of Quebec; and Mr. Bacheldor after finding out the necessity for this, then sees also the necessity of sending them from Quebec to England, there being no direct means of conveyance (said the averment) from Quebec to Van Dieman's Land. But he wished to inquire by what authority the governor of Lower Canada acted thus, and whether he had done so by the law of England, for no other was set forth. The governor (Sir J. Colborne) then issues an order to the master of a

private barque (a Captain Ross) to receive the prisoners on board and take them to such part of England as to her Majesty the Queen seemed fit. He would ask his learned friend how he justified such interference? Nay, he must go farther and justify the authority mentioned in the return, the supposed necessity. First of all was there any necessity well alleged by any person? No; or if it were legal in the governor of Upper Canada to send the prisoners to England, has his warrant authority and power in Lower Canada? No such thing; but the governor of Lower Canada immediately takes him up on his own warrant. Could a private individual have done so? If not, how is a governor distinguished? Could not the governor of Nova Scotia have done so if the governor of Lower Canada had such authority? The averment of the necessity to carry the prisoner from place to place might have justified his being carried by stress of weather over half the globe. By what rules were they to test it? Within what limits to restrict it? Their lordships would perceive it was only a matter of convenience. If a ship came from Quebec to England, it might have gone, if directed, to Van Dieman's Land; so that the transit of the prisoners might have been altered by any person as utter a stranger to any authority in Upper Canada, as the governor of Ceylon or any other distant place. To the prisoner, Watson, this was not so important, but to some of the others it was, as they were transported only for fourteen years, to be dated from their arrival in Van Dieman's Land, and therefore the term of their transportation was lengthened. Did Bacheldor know the necessity which he averred? Did her Majesty sign any paper, or do more than revolve this matter in her own mind as to directing to what part of England the prisoners should be taken? Was there any royal document under any seal, signed by any minister or office of responsibility?—This brought him to the last objection—that none of the documents or averments are set forth in the return (as they ought to be) so as to answer the exigencies of the case. Surely their lordships would not take the facts as they were stated, and that, too, on the evidence of Bacheldor. The documents must of necessity be set forth;

no general averment would do; but the facts must be clearly and fully stated. He would just call their lordships' attention to the first averment. It was said the prisoner petitioned the governor. Should not that petition be set forth? Was it enough to be told by any person (particularly one 3,000 miles from Canada) of such a fact? But it was also said that the petition was a confession of guilt; guilt of what even their lordships were not informed. They knew generally it was treason, but not the species. Let their lordships, too, as to the confession of guilt, draw inferences for themselves. It was said the prisoners assented; but how;—by words, by writing, or in what other manner? All this he apprehended should be set forth. He might admit, without injury to his clients, that the court would give credit to this conviction when properly averred and set forth in the return. But the return was defective. Now there was a case in which the judges had spoken emphatically, and which applied to the present instance; it was that of "the King v. Clerk," Salkeld's Reports, p. 349, in the reign of William III. In that case a writ of *habeas corpus* was directed to the keeper of Newgate for the body of Clerk, and he returned answer, there was a corporation of London and court of Aldermen, and, refusing the writ, the court committed him for not taking on himself the office of liveryman. The decision was this, "That when a commitment is in court to a proper officer then present, there is no warrant of commitment, and therefore he can not return a warrant *in hæc verba*, but must return the truth of the whole matter under the peril of an action; but if he be committed by one that is not an officer, as in this case, there must be a warrant in writing, and when there is one it must be returned, for otherwise it would be in the power of the jailer to alter the case of the prisoner, and make it either better or worse than it is in the warrant, and if he may take upon him to return what he will he makes himself judge, whereas the court ought to judge, and that upon the warrant itself." What a delusion would it be—what a mockery were it otherwise!—As was said by Mr. Justice Foster, it would be giving children baubles when they asked for bread, to grant a *habeas*

corpus writ, and then take judgment of the jailer of Liverpool as to what was contained in the warrant or the documents referred to in the warrant. He was prepared to show (if permitted) that the jailer gave in a warrant, saying it was the only one he had, but it did not appear now what that warrant was.

Lord Denman observed that it was useless to go into that matter.

Mr. Hill thought this was an exception to the rule. By the *habeas corpus* act, the jailer was bound to give to any party in prison applying for it a warrant. It was not stated in the act what was to be done with it; but it would be useless to give it if it were not to show it. Sir Samuel Romilly, than whom there never was a sounder constitutional lawyer, in Croley's case had spoken of the great advantage of the *habeas corpus* act, but said it conferred no new rights, but insured old ones, and imposed on all concerned the necessity of doing their duty. Judges were even liable to a fine of 500*l.* for neglecting their office in this matter. Jailers and all other persons were peremptorily required to obey the writ of *habeas corpus*; and the return was to be made immediate; because the return had suffered not so much from a refusal of *habeas corpus*, for he did not recollect that in the worst times such an application had ever been made as was yesterday made by the Attorney General, to narrow the writ of *habeas corpus*; but it was attempted to defraud the subject of liberty in another way; and that was to make the writ of no use when granted. Therefore it was sometimes made returnable at a long period, and at other times it was evaded in different ways, and he therefore agreed with Sir Samuel Romilly in thinking that the *habeas corpus* act was passed not so much for giving an essential remedy against oppression as for completing and making perfect the remedy which existed in the common law. When, therefore, he found that in pursuance of the provisions of that act, it was made imperative on the jailer to deliver a copy of the warrant of commitment of the prisoner, he was led to conclude that a

copy of the warrant had been brought under the notice of the court, if not set out *in ipsissimis verbis* in the return.

Lord Denman did not say it was not before the court, but it was not competent for the learned counsel to travel out of the return in the present stage of the argument.

Mr. Hill said, that on the return there he had expected to see some authority stated, by which the jailer conceived he was justified in keeping the prisoner in confinement. He would not apologise to their lordships for the length of time during which he had accupied the attention of the court, because the case intrusted to his care was one of momentous interest. He knew that able men might have said more in less time, but he trusted he had discharged the duty he was called on to perform with determination, dilligence and zeal. The prisoner for whom he appeared, had a right, whatever his conduct might have been, to all the privileges of a British subject. Though born abroad he was a British subject. If a Hindoo, or a black inhabitant of New South Wales, he would still be a British subject, and entitled to have his liberty as much respected as the highest subject in the realm.

Mr. Roebuck, who also appeared for the prisoner Watson, as well as for all the other prisoners, said that he must congratulate his client, and he must also congratulate the people of this country, that after about a year's imprisonment, the prisoner, now in court, had been enabled to see the face of a judge. It was supposed that by the peculiar character of the English law, every man, upon incarceration, was entitled to be brought to trial at the earliest possible opportunity, and that he was protected against being punished without trial, without a hearing by himself or counsel, without an opportunity of producing witnesses in his behalf, and without the sentence of a judge. But in the present case, they had a man punished, after one year's imprisonment, without seeing a judge, without a sentence of a court, without a trial, and even without arraignment. And how did it happen that they had become aware of these extraordinary circumstances? Because by a fortunate chance for the prisoner, he had been

brought to this country, where he might be reached by the arm of the law, and not submitted to the tender mercies of colonial administration. The man was in that court; he cried out to their lordships, "I am a prisoner without trial; I am brought to this country without law; I want you to tell me why I am detained." Thus the prisoner stood before them, and he (Mr. Roebuck) asked, most humbly, but at the same time with a great desire to impress on their lordships the importance of the question, what was it their duty to do under the circumstances? for when their lordships' duty came to be investigated would be found out the best means of relieving the prisoner. He was imprisoned illegally; he had been brought from a part of the British dominions abroad, against his will, and not only against his will, but against the law. The jailer who detained the prisoner was asked upon what authority he acted. Now it happened in most cases that the party detaining another really did not know of his own knowledge the cause of detention. But was the law so careless, so thoughtless of the liberty, happiness, and lives of the subjects of this realm, as to leave it to a low functionary to determine whether or not a man should be detained and punished by transportation for life? No such thing. The law was not so regardless of the interests of the subjects of the Crown, at least in this country, though it seemed to be in the country from which the prisoner had come; but there the law was beaten down. It was said—*inter arma silent leges*; and silent indeed were they in the colony to which he alluded. But in England the law surrounded the subject with safeguards. When a man appears on the British soil detained by another, upon the pretence that that detention is in execution of the law, there must have been gone through a set of vital forms, which would satisfactorily prove to their lordships' minds that the man was legally detained. Had they any forms in this case? Was there a shadow of a form? Not one. There was not the deliverance of a single document, nor even the pretended copy of a warrant. Their lordships had alone before them—and that even not on oath—the assertion of the jailer at Liv-

erpool, who stated a certain number of facts, without explaining how they came to his knowledge. He wished their lordships not to suppose that he was going into a description of the situation of the country from which the prisoner had come, but he entreated them not to allow their minds to be influenced by the continuous outpour of abuse which had in every shape been directed against the parties now before the court. Pamphlets, books and newspapers had been published to prove their guilt; but now it belonged to a legal tribunal to say whether they were guilty or not. He knew it had been laid down as a general proposition of the law of England, that if there appeared before the court a sentence of imprisonment, given by a competent tribunal of jurisdiction, the court would then suppose that all the necessary legal steps had been taken before that sentence was awarded. In the present case did there exist a sentence of any competent tribunal? This could not be established by the mere simple statement of an individual, but by certain legal evidence requisite to prove that the prisoner had been legally convicted. What document was there before the court? The return of the writ of *habeas corpus* made by the jailer at Liverpool, and that writ originated in this way:—A certain number of men appeared in this country, detained forcibly. *Prima facie* that was necessarily illegal. Supposing they had come from Japan, they could not have been detained an hour. If, therefore, these men were to be detained at all, it must be by the law of England. What, then, was the law? It was this—that if men were brought from our colonies in a state of detention, it must distinctly appear, or their detention would be illegal, that they had there been convicted by a court of justice, and adjudged to transportation. Both of these conditions were essentially requisite; it not being sufficient that the party should be convicted merely, but it being also necessary that he should be convicted of an offense for which the punishment of transportation should be awarded. He objected to the return in the present instance on two grounds,—first, on account of its affirmative propositions, because what it affirmed was sufficient to prove that the re-

turn was improper ; and he also objected to it on account of its negative quality, because of its insufficiency in omitting to set forth certain things which ought to have been stated, no cause appearing on the face of the return for the detention of the prisoners. With respect to the first objection, the return affirmed that there was an act of the Legislature of Upper Canada containing certain provisions, among which was that making it lawful, in the event of any one charged with high treason committed in that province confessing his crime, and petitioning for mercy before arraignment, for the lord-lieutenant of the province, with the consent of the Executive Council, to grant a pardon ; which being granted under the great seal of the province, should—he begged the attention to what followed—should have the same effect as the attainder of the person therein named for the crime of high treason, so far as regarded the forfeiture of his estate and property, real and personal. It was not an act of attainder in effect, except as respected the forfeiture of property. Not having an opportunity of making references, he was not at the present moment able to state how far this act was in consistence with the general law of Upper Canada, but he was able to show what the law of England as regarded Upper Canada was, and until it was shown that the law of Upper Canada was changed by an English act of Parliament, he was bound to suppose that the English law was there in force. The 14th George III., c. 83, set forth that whereas the benefits of the criminal law of England having been felt by the inhabitants of Canada for nine years, during which it had been administered, it was expedient that the same should continue to be uniformly administered, and observed as the law of Quebec, which at that time included both the Upper and the Lower Canadas, as well in the description of the offenses, as in the mode of their prosecution and trial. Upon the return that had been made to the court there was no proof that any alteration had been made in that law. But it might be said that there had been a subsequent act in the 31st George III., enacting that all laws, statutes, and ordinances, in force on a certain day fixed by that act,

should remain and continue to be of the same force and authority in each of the provinces as if that act had not passed, and as if the province of Quebec had not been divided; and it might further be said that that act gave the colonial Legislatures power to alter the law in certain cases. But, as they were to be confined to the return, he must remark that the return did not show that the law of Canada had been at all altered as regarded the prosecution and trial of offenses. As the act he had just mentioned gave to all the ordinances passed previously to it the effect of law, he thought he might be permitted to allude to one of those ordinances as having thereby assumed the character of an English law. By the ordinance of the 24th George III., it was provided, that if any person lawfully convicted should in open court pray to be transported beyond the seas, and out of the province—

The Solicitor General observed, that the 31st of George III. enacted that certain ordinances should continue in force until repealed; and he objected to Mr. Roebuck's reading something which he said was one of the unrepealed ordinances.

Lord Denman did not see how they could ascertain the fact whether it was repealed or not.

Mr. Roebuck said, that an act having passed authorizing the adoption of the English law and practice in criminal matter, he presumed that all the forms required here before the transportation of any person, would be necessary in Canada. By the 31st George III. powers were given to the colonial Parliaments to make laws for the good of the province, with this peculiar qualification, that those laws should be confined to purposes within the province in which the same was passed. The power of the colonial Legislature was confined within the territory, and therefore, though they might banish, they could not transport. They might say that certain men should not live within the province, but they could not say that they should live in any particular place out of it. Their power ceased the moment the men were transported, though the men could not of course return to the province. The English Parliament, seeing what was

the effect of that act, and considering that the Legislatures of the provinces, though they might banish *extra fines* had not the power of transporting,—that is to say, of sending persons to live, under certain restrictions, in a particular place out of the provinces—passed a law, empowering the colonial authority to transport, not every person that might be disagreeable to the government, but such as had been convicted in court before a judge, and sentenced to transportation. He wished to make the distinction between the judicial and executive powers of the province; for in the present case the executive power alone intervened, and the judicial power nowhere appeared. Neither the governor of the province, nor the executive, nor both combined, was a judicial authority in criminal matters; and, though they formed a court of appeal, it would require another act of Parliament to make them a court of criminal jurisprudence. Consequently the explanation given in the return, that these parties had not been convicted, nor adjudged to transportation, showed that the return was insufficient, and therefore, without more ado, it was plain they could not, according to that return, have been legally subjected to transportation, though they might have been, perhaps, legally liable to banishment. But supposing they had been convicted by a court of law in Upper Canada, and supposing they had been brought to this country in consequence of that conviction, still he maintained that the return was invalid and insufficient, inasmuch as it did not inform their lordships under what law they were brought here, nor set forth the important fact that the parties had been convicted. Their lordships could take no legal notice of the law of Upper Canada, but would they allow the governor of the jail at Liverpool to instruct them in the law—to tell them just what he pleased; and would they permit that what he said should be taken as conclusive and irrefragable evidence of the law? It would require very strong evidence, he thought, to make their lordships believe that there existed a law by which a person might be put in prison, and might afterwards on petition, and making a contract with the governor, while remaining in

prison, and might afterward, on petition and making a contract with the governor, while remaining in durance, be transported, whipped, tortured or mutilated. The return set forth that which was illegal. It stated that there was a contract between the governor of the province and the prisoner to the effect that he should be transported for life; but it did not do what the law of England required to be done, viz., give the judge's sentence subjecting the prisoner to transportation; and with respect to the contract, it had been laid down expressly by a high authority, that no freeman could be subject to duress or imprisonment in consequence of any contract, but only by judgment of a court of law. By the law of England, if a man condemned to death had his punishment, the secretary of state communicated that fact to the judge, who made it a portion of the record. Was there any thing of the sort in the case? No. The return set forth that there had been a contract, which was obviously illegal, and they were besides told that pardon should be equivalent to attainder. As far as regarded the forfeiture of property, this might be true; but it did not justify transportation. But supposing, for the sake of argument, that a confession of guilt on the part of any person justified his transportation from the province, it might so happen that Governor Arthur, with a troop of soldiers, might apprehend any person he chose, and send him here to be transported; but when he arrived in this country the law would surround him with safeguards, and protect his personal liberty. Their lordships ought to be informed under what law the prisoner was now in court, and under what forms he had been transported. What was the ordinary case when a man came to this country convicted in Upper or Lower Canada of a felony? He was brought here with the record of his conviction, with an attested copy of his pardon, and the award of the court of justice. But no such forms had been preserved in the present case, and therefore, so far as regards the law, the return was insufficient. His learned friend, Mr. Hill, had entered into a long description of the want of form, and had traced the insufficiency from Toronto to this country. He (Mr. Roebuck) would trace it from this

country to Toronto. A complaint was made of the unlawful detention of parties at Liverpool, and the jailer was asked whether he had any warrant. The jailer replied that letters patent were issued in Upper Canada authorizing the transportation of the men; but Sir J. Colborne had no power to transport, and if he had it ought to have been set forth in the return, and on this account the return was defective. The next important point with respect to which the return was defective, was the want of a judge's warrant adjudging the prisoner to transportation. He knew that the prisoner when he first heard the return read, learned with horror that he was transported. Look at the dates; the man was put into prison in December.

The Attorney General said he must again interrupt his learned friend. The court could know of no proceedings but those on the record.

Mr. Roebuck said he would state the case in this way: the pardon was dated in October, but no date was given for the petition. Who proved that there ever was a petition? Mr. Bachelidor. But such evidence as that would not prove that a man owed twopence. Their lordships had now before them a beautiful specimen of the way in which the government of Canada might be administered, not according to the law, but at the will of the governor. It would be a disgrace to Englishmen if they could be transported in such a way, and he was sure that their lordships would not by their high authority sanction such a proceeding, would show to those who sent the prisoners to this country how high was their estimation of the liberty of the subject, and of the great and sacred character they were invested with. They were judges met to administer the law, and they would show those men, who were no judges either in name or in fact, their opinion of this proceeding by discharging Leonard Watson, who was a prisoner against law and without law. They had no evidence that he was a criminal; all the evidence they had was that he was unfortunately a prisoner, but a prisoner without having had sentence passed on him.

The Attorney General said it now became his duty to answer the arguments which had been advanced by his learned friends; but he felt he had a right, in the first instance, to complain of the tone which had been adopted by them, who, instead of confining themselves to those points in which their clients were entitled to the benefit of their assistance, had rather indulged in declamation and resorted to topics, particularly Mr. Roebuck, which ought not, and could not, have any influence with their lordships. What effect they might produce elsewhere was not for him to say, but he hoped they would be properly appreciated. He did trust that in no quarter of the world would they produce any effect in preventing that mild and merciful administration of the law being pursued, which had hitherto prevailed in the country from which these prisoners had come. He must also complain of his learned friend (Mr. Hill) for making a very invidious and unfounded charge against him in respect to the objection he had submitted to their lordships upon their jurisdiction in this case under a writ of *habeas corpus*, issued by a single judge in vacation. That objection could have had no effect in prejudicing the case of the prisoners, for, if it had been successful, it would not have delayed the consideration of their case, or their discharge, if they were entitled to a discharge, for twenty-four hours. But when he had the authority of Lord Coke, Lord Hale, Lord Mansfield, and other high authorities, which he conceived to be the authority of the Legislature in the reigns of Charles II. and George III., pronouncing that such a proceeding should not take place unless by virtue of the statute, he really could not blame himself for submitting the point to their lordships' judgment, but should have blamed himself if he had not done so. Their lordships had decided against him, and from the bottom of his heart he rejoiced at their determination. It was the first time, however, that the point had been decided. With respect to the prisoner, Leonard Watson, his learned friends had endeavored to represent him as an oppressed man, deprived of his liberty, and sentenced to transportation for life, without knowing what offense he was charged with. Their lordships would take the return as

true, and of its truth he had no doubt. If it were false there was remedy by action. His learned friends, too, by the course of their arguments, had accepted it as true, and what did it aver? It showed that the innocent, the illused, the illegally transported Leonard Watson, humbly petitioned the lieutenant governor of Upper Canada (he having been indicted for high treason, and having an opportunity of taking his trial and showing his innocence) acknowledged his guilt, and stating his penitence, prayed that her Majesty's gracious pardon might be extended to him on such conditions as should seem proper to the lieutenant governor and the executive council. In the merciful spirit with which the law is executed in Canada, his prayer was accorded upon the condition of his being transported for life. He assented to that condition of his pardon, and he was now in the execution of that sentence for which he prayed, in the course of being sent to Van Dieman's Land, and he complained, through his counsel, of great grievances and oppressions, and wished to be discharged from imprisonment, again to return to Canada and foment rebellion there. This then was the ill used man, the victim of a cruel administration.—Let him now consider the objections taken to the return, and in doing so, he might take first and second conjointly. The first objection was that there had been no conviction, and the second was, if there had been a conviction there was no record of it on the return. These objections were based on an act passed in the 5th of George IV., and if that were the case it might be material for his learned friends to show that there had been no conviction; but he (the Attorney General) did not seek to bring this case within that act of Parliament. His learned friends had totally mistaken the object of that act. For a long course of years, the colonial Legislatures of this empire had, from time to time, passed acts by which transportation was awarded as a punishment for certain offenses.

Mr. Roebuck objected to the Attorney General traveling out of the return.

The Attorney General said he was referring to the act of George IV., which was matter of history. By that act, which

assumes that the colonial authorities had the power to transport, places were appointed, either in the river Thames or in particular harbors of England and Wales, where convicts in their transit might be kept, subject to all the discipline which prevailed there. These places went by the name of hulks. Now if the prisoner Watson had been subjected to the discipline of the hulks, he might have complained of harsh and illegal treatment, because he might have said that he had not been convicted, and had no judgment passed against him.— But the prisoner could make no such complaint, because he had been simply detained in her Majesty's jail at Liverpool until such time as he could be sent to Van Dieman's Land, in execution of the sentence which he had assented to. He (the Attorney General) would now bring before the court that on which he did rely, and that was the act of the Legislature Upper Canada, averred on the face of the return to have been lawfully passed—to have lawfully received the assent of the Crown, and the validity of which had never been objected to except in the course of some sarcastic observations with which the court had been favored that day. His learned friend (Mr. Roebuck) referred to the statute of 14th George III.; but he did not mean to say that that was not overruled by the 31st of George III., whereby Canada was divided into two provinces, Upper and Lower. By this act, which is the thirty-first chapter of the 31st of George III., there is a Legislature appointed for the province of Upper Canada, and here they could have no dispute as to the powers which might be conferred upon any colonial Legislature by the Crown which in some cases perhaps might be a matter of difficulty. The Legislature of Upper Canada was established by the imperial Parliament, and might pass all acts with the assent of the Crown, whether conformable or not to the 14th George III. The Canadian Legislature, then, having power to make such laws as the Crown might assent to, passed the 1st of Victoria, c. 10, which, after reciting that there was reason to believe that among the persons concerned in the treasonable insurrection in the provinces there were some to whom the lenity of the government might not improperly be extended, enacted

that it should be lawful for the lieutenant governor of the province, by and with the advice of the executive council, to grant pardon to such persons upon certain terms.

Mr. Roebuck said there was no evidence that this was really the act referred to in the return.

The Attorney General understood that the act was not set forth in the return, and he should, therefore, in the first place, suppose that it was an act of the imperial Parliament of Great Britain; or it would, perhaps, make the matter more clear and simple if he supposed that there was an act of Parliament in these words passed in the imperial Parliament, and saying that so and so might be done in Canada. If such an act had passed, could there be any doubt of the power of the lieutenant governor to commute the punishment of a party charged with high treason to transportation for life? The great objection which his learned friends had taken was, that no man could assent to any thing against his own liberty. "No man," said his learned friends, "can consent to be put to death;" they might have gone further and said, "no man can consent to a common assault;" the license would be bad, that is to say, where there is no authority in point of law to authorize the proceeding. But would it be said that the supreme power of the state could not create a law which might enable a person charged with a crime to agree, without submitting his case to a jury, to a particular punishment which might be awarded? That, he confessed at once, could not be done without the authority of the Legislature; but could it be doubted that the Legislature could confer such an authority? Their lordships would find that the 14th section of the habeas corpus act itself ran thus: "Provided always, and be it enacted, that if any person or persons lawfully convicted of any felony shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas, this act or any thing therein contained to the contrary notwithstanding." Here was a case of a person convicted of an offense, but for which he was not liable

to transportation ; yet the act says, " if he agree to be transported he may be transported." That was matter of contract, matter of assent, but done under the authority of the Legislature, the proceeding is valid. It would be a most cruel thing upon prisoners who were guilty if such a law might not be enacted ; because the Crown would be deprived of the means of extending mercy to them, and trials and convictions would be rendered indispensably necessary. The case to which he had referred in the habeas corpus act was one where after conviction a party prayed for transportation, which without his prayer could not lawfully be passed upon him ; but the Legislature might equally well have said, that if a person be indicted for an offense, and pray to be transported before trial, it should be lawful on his petition to pronounce sentence of transportation upon him ; and then, if that sentence was to be carried into effect, was he on the way of being transported to be permitted to move for a *habeas corpus* and say, " I am unlawfully deprived of my liberty ; true, I did consent, but a man can not consent against his liberty, and my detention is illegal ? " The 13th section of the habeas corpus act is also very material : " Provided always that nothing in this act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although afterwards such person shall renounce such contract." The very word " contract " was here made use of.

Mr. Hill.—The contract is not in that case for punishment.

The Attorney General.—It is not for punishment, but it is the case of a man renouncing his liberty — not a contract by way of punishment for crime of which the person might have been guilty, but by way of certain rewards for certain services performed. Did not this act of Parliament of Upper Canada, then, contemplate that the condition should be performed, and that all should be done which should be necessary for carrying that condition into effect, when it said " that a party charged with high treason may petition to be

pardoned, and a pardon may be extended to him on such terms as may be thought proper?" Was not transportation clearly within the meaning of that enactment? His learned friend (Mr. Hill) had asked whether the rack, mutilation, or torture, or some other enormous punishment unknown to the law of England, was not also included? It was unnecessary to ask that question, because the Legislature in the terms imposed here contemplated punishments known to the law, short of the punishment of death. The terms were to be "such as should be deemed proper;" and to such an enactment, in point of principle and humanity, no objection could be made. He was not therefore a little struck to hear that statute denounced as cruel, tyrannical and oppressive.—It must be supposed that it was lawfully and properly carried into execution; and if so, he would say it was a most salutary and humane law. It enabled the representative of the Crown to extend mercy to those who might have been seduced by the instigation of others, and who were much less guilty than those by whom they were instigated, but who cautiously avoided the danger, and where otherwise, treason having been committed, public prosecutions must proceed, convictions must take place, and that frightful sentence, which he would rejoice as much as his learned friend if it required no longer to be pronounced, must be heard in open court. But was it not a merciful and humane enactment that a person against whom such a charge was brought, who felt he was guilty, and was conscious he had no defense, who might have been taken in arms fighting against the troops of her Majesty, that such a person might be allowed to petition and be pardoned on terms short of suffering the last sentence of the law, in the hope that the exercise of mercy might have a beneficial effect on him and the community at large? The law said the party might petition. It was his own voluntary act. He might or might not take advantage of the law; it was introduced for his benefit, but he might renounce it if he pleased. But if he did take the benefit of it; if he acknowledged that he had committed high treason; if he acknowledged that his life was forfeited to the law; if he acknow-

ledged that sentence as for high treason must on conviction be lawfully passed on him,—was there anything hard or tyrannical in allowing him to petition for mercy, and that a sentence, sparing his life, might lawfully be pronounced upon him? The act of Parliament said that and no more. Well, then, was that sentence to be carried into effect? Was he to be allowed to present his petition, to acknowledge his guilt, to obtain a pardon, and then to violate and disregard the condition on which that pardon had been granted? If this were a statute of the imperial Parliament, would it not authorize everything which was necessary to be done in order to carry it into effect? It was not a statute of the imperial Parliament, but he said it was not a statute made under a statute of the imperial Parliament. It was a statute made under the 31st of George III., c. 31, which established a supreme legislation in Upper Canada, without any restriction whatsoever to make such a law. He did not now refer to anything not in the return, for he believed the statute of the 31st George III. was recited in the beginning of this local act; as indeed it should be in the beginning of every act passed by the Legislature of Upper Canada. The only remaining question, then, in this part of the case was, whether the sentence could lawfully be carried into effect beyond the limits of Upper Canada, being under an act passed by the Legislature of that province? He said that the Legislature of that province having the power, the undisputed power, of creating the punishment of death to be inflicted on any person found guilty of a particular offense, had the power of affixing transportation as a punishment, because it was lower than death. It was a punishment which was pronounced in the colony, the liability to which had been incurred in the colony, the party on whom it had been pronounced was in the colony; in the colony he became a convict sentenced to transportation. He being in the colony a convict sentenced to transportation, he might be lawfully transported.

There was not a British act of Parliament to authorize transportation from the colonies from any part of the world. It was done by the colonial assemblies *proprio motu*, and it

would be a most alarming state of things indeed, if all the sentences of all who had been so transported for many years were now to be re-opened, and all who had been sent from Jamaica and the different colonies of the west or east were to be declared to have been sent thither contrary to the law, or to have been unjustly deprived of their liberty. He apprehended that where a person had been convicted and sentenced to transportation under colonial law, the Crown, by virtue of its prerogative, had a right to carry that sentence into execution. It was immaterial that it was to be carried into execution beyond the limits of the colony. The 3d section of the 5th George IV., c. 84, was particularly worthy of consideration here. It gave a power to appoint any place beyond the seas, either within or without his Majesty's dominions, to which felons and other offenders under sentence of banishment should be conveyed. According to that act, a convict under sentence of transportation might be sent to a place not within his Majesty's dominions. His learned friend had cited the 1st William IV., c. 39, as authorizing generally the detention of prisoners sent to penal colonies. That, however, would be found upon examination to be by no means the purport and scope of the act. It appeared that certain parties who ought to have been sent to New South Wales, had been sent to Van Dieman's Land, and the act passed in order to render it lawful to detain them at Van Dieman's Land, instead of sending them to New South Wales. There was therefore no act of Parliament to authorize the transportation of convicts from the colonies to New South Wales or Van Dieman's Land; transportation was invariably carried into execution under acts of the colonial assemblies, and by the prerogative of the Crown; and the power to do so was fully recognized by the 7th section of the 5th George IV., which did not at all give validity to such transportation, but assumed its validity, and only said, that if the parties who were so to be transported came to this country, they might be confined in those ships to be set apart for the punishment of such offenders, and subjected to the discipline of the hulks while they remained in England.

The Legislature, therefore, had clearly recognized the power of the colonial assemblies to pass a law for transporting criminals from the colonies to another part of the globe. If, then, there were such a power in the Legislature of Upper Canada, could there be a doubt that the Legislature of Upper Canada had authority *proprio motu* to pass this act of Parliament, the 1st of Victoria, c. 10, which says, that if a person be charged with treason he may petition the lieutenant governor, and, admitting his guilt, may receive a conditional pardon upon being transported to Van Dieman's Land. Such was the substance and effect of that law. Was there any doubt that it might have been expressly enacted, that "any person charged with high treason, upon petitioning the lieutenant governor, and confessing his guilt, might, with the consent of the lieutenant governor, have been transported to Van Dieman's Land?" It would merely be exercising the same power exercised in passing a law whereby transportation was made the substantive punishment for a specific offense. The transportation was not in this case mentioned in the section of the act as one of the terms which might be agreed upon; but was it not clearly involved and contemplated in it? The words were, "upon such terms and conditions as may appear proper." Transportation was a well known punishment—well known to the law of England—well known in the mother country—well known in the colonies; there was no occasion for considering whether any punishment unusual and unknown should have been adopted. Transportation was a well known and recognized punishment, and clearly it was one of the conditions on which the pardon would be granted. If it were so, where was the objection to the legality of this act, and why was the sentence not to be carried into effect? If a man was convicted in Upper Canada of larceny, and sentenced to transportation, no doubt he could be lawfully sent from Quebec to Van Dieman's Land. So it was clearly and unequivocally declared by the Legislature itself. If he might be sent directly, he might be sent circuitously, where there were no means of sending directly to the place of his destination. Between

such a sentence upon conviction and a pardon upon such a condition as was here contemplated, it was impossible upon principle to draw the smallest distinction. If there were a power in the Legislature of Upper Canada to fix transportation as a punishment for crime, there was then also a power in that Legislature to enact that a person charged with high treason might, upon his petition and confession of guilt, be made subject to transportation, as if he had been formally sentenced to transportation. So much for the power of the lieutenant governor. His learned friend had asked why they had not shown the authority of the lieutenant governor. He relied on the act of Parliament of 31st George III.—he relied on the act of the colonial Legislature which was returned in answer to the writ of *habeas corpus*. These two showed the power of the lieutenant governor, because they showed that an act was lawfully passed by the Legislature of Upper Canada, conferring that power upon him. He had now to consider the manner in which the conditions had been carried into effect. He was asked what authority had Sir John Colborne, the governor of Lower Canada, to interfere? Arguing on the supposition that this was a lawful proceeding, and that by lawful means Watson might have been sent from Upper Canada to Van Dieman's Land, were not all the means necessary for doing it legalized by the same act?—The return expressly avers, and the averment was to be taken for true, that there were no means of transporting him directly to Van Dieman's Land. It might be, as he believed was the fact, that from no port in Upper Canada did vessels sail for such distant parts; but it was at all events easy to conceive that there might be a province so inland that the embarkation of the convict from any part of it would be physically impossible.

Lord Denman.—I may refer you to one argument used on the other side with respect to part of the Canada act. It appears by the return, that the conditional pardon was to have the effect of an attainder on the personal and real property of the party.

The Attorney General was very much obliged to his lord-

ship for drawing his attention to that point, but he sought no benefit at all from those words. They would in no degree prejudice the return of the right to carry the condition into effect. The words he relied on were these—"that a person charged with high treason committed in the province, may petition the lieutenant governor to be pardoned, and it shall be lawful for the lieutenant governor, by and with the advice of the executive council, to grant a pardon upon such terms as shall be thought proper." There he stopped, and if the statute had stopped there, the power would have been created for which he contended; because, before that it was enacted that if a person charged with high treason petitioned for pardon, pardon might be granted to him "upon such conditions and terms as may appear proper." Did it not then inevitably follow that the terms and conditions on which pardon was granted were to be carried into effect? Were these to be unilateral? Was the prisoner to have all the benefit, and the Crown and the public no security by way of return? Instead of being conditional, was the pardon to be absolute? Unless there was a power of carrying the condition into effect in the province, the moment the party left the province he was discharged, entitled to his liberty—he might go where he pleased, and conduct himself as he thought fit. But the act giving a power to pardon on terms and conditions, it was a conditional pardon, and the condition was to be carried into effect. Was not that the intention of the Legislature, and expressed with sufficient clearness? The words to which his lordship had been good enough to call his attention, were for the purpose of affixing a farther punishment, because without those words there would have been no forfeiture of land or goods. There being merely a pardon on condition of transportation, if the party had possessed half the province of Upper Canada he would have remained so; if he had possessed the most unbounded wealth, he would have been entitled to continue to enjoy it. He would still have been a landowner, a freeholder of Upper Canada, after having been transported for high treason. That was thought not to be a fit state of things, and therefore beyond the terms

that might be agreed on and prescribed by the lieutenant governor; at all events this security was to be taken, that there should be a forfeiture of land and goods, but no corruption of blood, which an attainder for high treason would necessarily bring along with it. Those words were therefore inserted for the purpose of showing that the party was to forfeit all his property real and personal, in addition to those terms and conditions on which the pardon was extended. But could his learned friend for one moment contend that this forfeiture of land and goods was to be the ultimate and only punishment to be inflicted—that this condition was a nullity not to be executed, and that as soon as the pardon was pronounced the condition was to be retracted or treated with contempt? These words were in reality an additional enactment, that in no respect qualified what preceded, but left the conditional pardon still to be granted, and the conditions to be performed on which that pardon was to be awarded. The two were entirely distinct. It was to be a pardon on conditions prescribed by the lieutenant governor of the province; then there was to be a fixed and ascertained punishment to be undergone in all cases; but there was to be no pardon without a forfeiture of land and goods. When his attention was called to this point, he was adverting to the objection which had been urged by his learned friend with respect to the supposed irregularity which had taken place. If there had been any irregularity in transmitting the prisoner to the province of Lower Canada, would that be any ground for discharging him now, when lawfully in custody of the jailer of Liverpool in execution of his sentence? He apprehended clearly not. But there was no irregularity. Incidentally there was a power to do all that was necessary for carrying the sentence into execution. He put the case of an inland province; and how in that case was the condition to be carried into effect? Although the return did not say specifically that there was no seaport in Upper Canada, it occurred, however, that the prisoner could not be sent directly from Upper Canada to Van Dieman's Land, which was enough for his purpose; the condition must be

executed, and the prisoner taken stage by stage till he reached his place of destination. There being no means of sending Watson directly from Upper Canada, it became necessary to send him to the sheriff of Quebec, the most proper and convenient custody for that purpose; and there he remained in execution of his sentence. The next averment was, that there were no means of sending him directly from Quebec to Van Dieman's Land, and he was therefore put on board ship to be brought to England. Was it to be said that was illegal? It might be easily conceived there were no proper ships for such a purpose sailing from Quebec to such a distant part of the world; what then was to be done? Was the prisoner to remain until a vessel fit for the purpose should be built, equipped and manned? He could not be sent directly from Quebec to Van Dieman's Land, but was sent to England as the readiest and most proper route by which he might reach his place of destination. There was no pretension for saying there was the slightest irregularity in his detention.—He now came to the fifth objection of his learned friend, that no warrant had been returned. In many cases a warrant was necessary; where a person was committed for trial, there must be a warrant to authorize his detention; but in many cases where he was in execution of a sentence, or what amounted to a sentence, there was no warrant, and no warrant could be required. The case on which his learned friend relied was that of "*the King v. Clerk*," 1 Salter, 349; but the precise distinction was drawn in that case for which he (the Attorney General) was now contending, that "where there is a commitment by warrant, the officer must return the warrant; but when a commitment is in court, where there is a commitment on conviction, there is no necessity for the production of a warrant; but the officer must return the whole matter under penalty of an action." Such was the case here, and he denied if a person was sentenced to transportation that there must necessarily be a warrant to the person entrusted with the execution of that sentence, any more than there must be a warrant to detain a man in jail who was actually in prison. The truth of the

matter was returned; and what was it?—that the jail of the borough of Liverpool, to which place the ship came, was the fittest and most convenient place for the purpose of detaining the prisoner until means were provided with all possible despatch of carrying him to his destination. Could it be contradicted that Liverpool was the fittest and most proper place for the prisoner to be detained? Was it fitting or necessary that he should be kept in the hold of the ship, in the roads, or at the mouth of the Mersey, exposed to the fury of the elements until a ship was prepared? Was it unlawful to enter the port of Liverpool? Was it not more fitting and humane that the ship should go into port, and that he should be lodged in some convenient place until, with all possible expedition, a ship was obtained in which he could be transported to Van Dieman's Land? The return averred that what had been done was indispensably necessary, and that it was the most proper and convenient course that could be pursued.

He had only one other objection to meet, and he confessed it had come upon him by surprise; the last objection was, that the return was not sufficiently specific—that it ought to have set out at large, and with greater precision, all the documents to which it referred. This was rather inconsistent with another observation which fell from his learned friend—that the jailer of Liverpool could know very little of all these matters. He must say to impose on a jailer the duty of setting out all documents of which he might not be cognizant would be very unreasonable; and the law which should say if that were not done by the jailer the detention was unlawful, would be very unjust; but such was not the law of England, which required no such minute details in a return to a writ of *habeas corpus*. He referred their Lordships to a well known rule, as laid down in Barne's case, 2 Rose, 157, that a return to a *habeas corpus* differed from other judicial proceedings, and such precise certainty was not required in the terms; it was sufficient if the court could learn from the return the substance of the matter. That was quite reasonable; and that rule had in this case been fully complied with.

The same rule was laid down in the 3d Wilson, p. 337. He doubted whether there ever was a return to a *habeas corpus* that set out the proceedings so fully as had been done in this case. He would refer their lordships to the case of "the King v. Saddis," 1 East, p. 306, which was a writ of *habeas corpus* directed to Sir W. Pitt, governor of Portsmouth, to bring up the body of John Saddis. The return set out the proceedings of a court martial at Gibraltar, and stated that the court having heard evidence for the prosecution was of opinion that the prisoner had been guilty of a breach of the articles of war, and sentenced him to be transported to Botany Bay for fourteen years; that the proceeding was approved of, and that the governor of Gibraltar, in order to carry the sentence into effect, sent the prisoner to England, in custody of Lieutenant Rogers, of the 70th Regiment; that, having arrived at Portsmouth, Lieutenant Rogers delivered him to Sir W. Pitt, as governor of her Majesty's garrison at that port, to be by him kept until he could be sent to Botany-bay, in pursuance of his sentence. There was no warrant sent with Lieutenant Rogers to Sir William Pitt, nor had Sir William Pitt any warrant from any authority whatever. The return merely alleged that the governor of Gibraltar had delivered Saddis to the custody of Lieutenant Rogers to be sent to England, and that Saddis, on arriving in England, was delivered by Rogers to Sir William Pitt, as governor of the garrison of Portsmouth, until he should be sent to Botany Bay. The court held that to be a good return, and Saddis was remanded in execution of his sentence.

Mr. Justice Williams.—Who was counsel in that case?

The Attorney General.—Mr. Erskine was counsel for the prisoner, and Mr. Abbott, afterwards Lord Chief Justice, on the other side. The case was most elaborately argued; various objections were taken; they were overruled; but it was not thought possible to take the objections for the want of the warrant. He would read what Lord Kenyon said on the subject: "There must always be a leaning in favor of liberty; we must, however, take care not to carry that disposition too far, lest we loosen the bonds of society, which is kept to-

gether by the hope of reward and the fear of punishment. It has always been considered that judges in our foreign possessions are not to be bound by the rules proceeding in our courts here." He then said, "We are not sitting as a court of error to review the irregularity of their proceedings, and I see no reason for saying that the form of the return is not sufficient." Mr. Justice Cross, who followed him, said that the objection made was one of error, but they did not sit there as a court of error. Mr. Justice Lloyd observed, that it was a return to a writ of *habeas corpus* made by the person in whose custody the prisoner was left in execution of his sentence, and who could not be cognizant of all the proceedings; it was enough that the court had authority to pronounce the sentence, and that the governor returned the cause why the party was in custody. Mr. Justice Le Blanc said it was sufficient for the officer having the prisoner in custody to return to the writ of *habeas corpus*, that a court having competent jurisdiction had convicted him, and that he held him in custody under that sentence. It was enough, then, for the keeper of the jail at Liverpool to have returned that act of the colonial Legislature, the conditional pardon upon transportation, and that Watson, now in custody, was on his way to Van Dieman's Land in execution of that sentence. He had now, he believed, gone through with the whole of his learned friend's objections; but before sitting down he thought it his duty to call their lordships' attention to this point, that if there were any informality in the return, of which he was not aware, this was not a case in which their lordships would discharge the prisoner. It appeared from the return that he was in custody upon a charge of high treason, committed within the dominions of her Majesty, for which, if the act of the colonial assembly were a nullity, if this conditional pardon were a nullity, he was still liable to be tried either in England or in Canada. If he renounced the statute and the pardon, he threw himself upon the general law of the land; and it appearing on the return that he was in custody upon such a charge, he humbly submitted that being so indicted he was not entitled to be discharged. He

referred their lordships upon this point to the 16th section of the habeas corpus act itself, which enacted "that if any person or persons should be committed on a capital offense in Scotland or Ireland, or any of the islands or foreign plantations of the King, his heirs or successors, where he or she ought to be tried for such offense, such person or persons may be sent to such place, there to receive their trial in such manner as the same might have been used before the making of this act, any thing herein contained to the contrary notwithstanding." He was arguing on the supposition that his learned friend could persuade their lordships that the colonial statute was a nullity, that the conditional pardon was a nullity, and that the party was in the same situation as if he had merely been indicted. The indictment being in existence, he submitted the prisoner could not, according to this section of the habeas corpus act, be discharged. If the proceedings were irregular of which he complained, still he was amenable to justice. He (the Attorney General) should most bitterly regret if the prisoner should be put in any jeopardy, and he should rejoice to see his sentence mitigated instead of his incurring any peril from renouncing the benefit that had been conferred upon him; but at the same time, if he thought fit to declare that all which had been done was illegal, null and void, he was not for that reason altogether to escape the penalty of the law. Having acknowledged that he was guilty of high treason, he was not on that account to escape from its consequences. He begged to refer to two cases upon this point—the first was "*the King v. Kimberley*," 2 Strange, 248.

Mr. Hill submitted that his learned friend was now going into matter of which he had received no notice. If there was anything in the course of the argument he was now taking, it should come on in the shape of a distinct motion.

The Attorney General had put his learned friend in possession of the whole course he intended to take; he had even told him he should move for leave to amend the return, if necessary; but he was now showing cause only why the prisoner should not be discharged.

The Attorney General.—There was a charge against the prisoner for having committed an offense in Ireland.

Mr. Justice Coleridge.—You must make out that this man has committed high treason. The words of the act are, “if any person or persons shall have committed,” &c.

The Attorney General.—The words he relied on were, “where he or she ought to be tried” they were to be sent for trial; it was not necessary to prove their guilt before the court, or to prove more than that the charge depended against them. The case here was much more serious than the existence of a warrant; the prisoner had been indicted for high treason. There was another case of “the King v. Platt,” 1 Leach’s Crown Cases, where the prisoner, on the warrant of Mr. Abingdon, a Middlesex magistrate, was committed to Newgate for high treason at Savannah, in North America. An application was made to have his trial brought on, or that he might be discharged. He was not tried, however, and the application for his discharge was refused; he was remanded, there being this warrant against him by a Middlesex magistrate, for treason committed in North America. He should have apprehended that a Middlesex magistrate had, strictly speaking, no authority to grant a warrant for committal of an offense beyond his jurisdiction; but it appearing that the prisoner was in custody on a charge of high treason, the court refused to discharge him. Now, Watson was in custody; it appeared by the return that he had been indicted for high treason—that showed that proceedings were depending against him; he ought to have been lawfully tried on the charge, and according to the habeas corpus act itself, and the two cases quoted, he could not therefore be entitled to his discharge; but, looking to this return, he believed their lordships would see no objection whatever, and they would be of opinion that this was an act of the colonial Legislature of Upper Canada which they had power to pass; that under that act the lieutenant governor was empowered to grant a pardon upon condition of transportation to Van Dieman’s Land; that according to that act, this amounted to a sentence of transportation to Van Dieman’s Land, and might lawfully be

carried into effect. If so, they would also be of opinion that all which was necessary to carry that sentence into effect became legal; that it was lawful to send him from Upper to Lower Canada, from Lower Canada to Liverpool, and to detain him there till the means were provided, with all possible expedition, for conveying him to Van Dieman's Land. He had now done, having discharged, but he hoped not in any respect exceeded, his duty. He had heard with great satisfaction their lordships' judgment with respect to the validity of the writ, but he must deprecate any decision pronouncing these proceedings irregular and illegal. He knew their lordships would come, if compelled, to such a conclusion with the utmost possible reluctance, because the most frightful consequences might be anticipated to ensue from any such decision; but he believed they would without difficulty decide that all these proceedings were legal; that the prisoner was lawfully in custody, and might lawfully be sent to the place of his destination, where he earnestly hoped the prisoner, on reflection, would sincerely regret the part he had taken in the rebellion, and where he was sure there would be the utmost possible disposition to extend to him every degree of lenity which the safety of the state permitted.

The other counsel for the Crown addressed the court in turn, but their arguments, being a repetition in part of the Attorney General's, are omitted.

Lord Denman, after consulting with the other judges, said they were considering whether Mr. Hill would reply on this case or generally, when the other return was discussed.

Mr. Hill said, probably the court would give him till to-morrow to consider.

Lord Denman.—Several of the topics are of a general kind.

Mr. Hill said, that upon another case being moved, his arguments would in effect be a reply to what had been advanced on the other side, and it therefore occurred to him that probably that would be a better way.

Lord Denman said it struck the Court that it would be more convenient to hear the arguments in that form.

The Attorney General said, that on the return it did not appear that the second section of the provincial act had been introduced ; he had imagined it had been, and he therefore now begged permission to have it included in the return.

Mr. Hill remarked that if his learned friend would include all the documents, he would at once consent.

The Attorney General was not asking the consent of the counsel on the part of the prisoners ; he merely asked that he might be allowed to set out the whole of this particular provincial act, of which a part only now appeared on the return. At present the preamble and the second return were not set out. There could be no doubt their lordships had power to permit this to be done. There could be no injustice to the prisoners if this was allowed.

Lord Denman.—You object, Mr. Hill, do you?

Mr. Hill replied in the affirmative. He had not had an opportunity of looking into the power of the court in reply to his friend's application ; but assuming the court had that power, of which they would feel quite confident before they exercised it, he should oppose the application and put it to the discretion of the court. He apprehended there could not be a worse example than that a return which ought to be full and complete in the first instance, should be modified so as to suit the exigency of the argument. His friend had said they could not complain of the documents being set out fully. So far from complaining of that, he would say this, that if his friend would put the warrant in the return—if he would undertake to put all the documents on the return, on the part of the prisoners, he would concede to its being done ; but he hoped his friend would not be allowed to alter the return with regard to one document, and to refuse that which he could not but conceive was common justice. His friends had spoken of an indictment—let them set that forth ; they had spoken of a pardon—they had set forth a portion of that pardon—would they set forth the whole of it ?—Would they set forth the petition of the prisoner ? Would

they set forth the assent of the prisoner? Would they set forth the mode by which the Queen had signified her pleasure to the jailer of Liverpool that he should receive these persons? If his friends would set forth these documents, he should consider himself justified in consenting to the alteration; but when he found his friend acting upon a system of garbling documents, but now trying to set forth the whole of some one document, he trusted their lordships would not exercise their power for any such purpose.

Mr. Roebuck hoped their lordships would allow him to add a few words. His friend, the Attorney General, was here in his great public capacity, and he was sure in the discharge of that function no one would wish he should act upon an opinion which he knew to be grounded upon imperfect law. The Attorney General had made an application to put in his return certain documents which he had found necessary. His friend had learned what was the real nature of transportation in Canada, and he had the means at this moment of satisfying the court as to the law upon the subject. If he wished to set forth one law—namely, the 1st of Victoria, would he set forth the 7th of William IV., by which their lordships would be made cognizant of the mode of proceeding in cases of transportation in Upper Canada. His friend was standing there as a great public officer in the discharge of a great public duty, and it was in that character he addressed him, and he would ask him why he did not make the court cognizant of the whole law of the case?—Wishing their lordships well, and wishing justice well, he must wish they should give a fair decision; they could not do so unless his friend put them in possession of the law, and if he administered justice fairly he would do so.

Lord Denman then addressed the Attorney General. He applied to have one act set forth in full. Mr. Roebuck said another act was important to be considered. The court could not tell what that was, but if it could be in any way material, if it had reference at all to the later act, it seemed reasonable that that should appear as well as the other. It was desirable the court should have the fullest information

they could possibly obtain, and more particularly when the court could not help knowing that the documents were accessible.

The Attorney General was not aware of any act that would give information.

Lord Denman said, any thing that might throw light upon the state of the law with reference to transportation in Upper Canada.

The Attorney General had no doubt there were many acts of the colonial Legislature respecting transportation, but he was not aware whether they had relation to the act in question. He had prayed that the whole of this act of Parliament might be set forth in the return. He had imagined that it had originally been stated; he found only a part had been given; he was content with that, but he thought the whole had better appear. He did not wish to claim any thing as a matter of right, but he apprehended that before a return was filed the person who made it might amend it.

Lord Denman said the first thing in this court was the filing of the return, and that must be done before any discussion could take place upon it.

The Attorney General was willing to bow to the discretion of the court, and he would not ask any thing as a matter of right which the court in its discretion should not think reasonable.

Lord Denman said the court thought it reasonable that these two acts of Parliament should be set forth on the return.

Mr. Hill said their lordships would not understand him as withdrawing his objection; he was asking that all the documents should be introduced.

Lord Denman.—We are clear these are documents which exist, and we think it reasonable we should see all that can possibly bear on the subject. With regard to the others, we don't know that they can be produced, and we don't know the bearing of them.

Mr. Hill said they had one of them present then.

Lord Denman thought the acts of Parliament ought to be introduced; but the court would not impose any terms as to the other documents.

The Attorney General would, then, at once consent that the two acts of Parliament should be introduced in the return.

Lord Denman.—We will take the return as being so amended.

CHAPTER XVI.

Arguments Continued.—Judgment by Lord Denman.—Proceedings against the Jailor for making a False Return.—The Court of Exchequer.—Judgment, &c.

MR. HILL proposed to read the return to the writ issued by Randall Wixon, and he would wish the officer of the court to read so much of the return as would give the date of the indictment, and the condition of the pardon. From this it appeared that the indictment was for high treason, and was dated the 8th of March last; and that before his arraignment the prisoner Wixon petitioned the lieutenant governor, confessing his guilt, and praying that pardon might be extended to him on such conditions as the lieutenant governor should think fit; and that the lieutenant governor had consented that mercy should be extended to him on condition that he should be transported to a penal colony at Van Dieman's Land for fourteen years, to commence from the date of his arrival at the colony.

Mr. Hill then proceeded to address the court. It now became his duty to move, upon reading the return, that the prisoner, Randall Wixon, should be discharged. What he should address to their lordships upon this case would be in part a reply to the observations of his learned friends upon the case of Leonard Watson, with such other matters as arose from the difference of the two cases of Leonard Watson and Randall Wixon, the return to whose writ had then been read. It must always be matter of pain to him when the mode in which he had been compelled to conduct his case was painful to the feelings of any of his learned friends who were oppos-

ed to him, and this was more so when, after a very careful consideration of every word that had fallen from him in addressing their lordships, he could not feel himself permitted to retract any one observation which he then and now thought it his duty to make. He could not see what possible object had been attained, except that of not husbanding the time of the court, by the preliminary objection which had been made by his learned friends. His friends had told their lordships that the authorities upon the point laid before them were contradictory. For eighty years there had been nothing like a contradiction, nothing like the slightest interference with the point, and he begged before he left this topic, as he trusted forever, to state that his friends had been led into an inaccuracy when they said that in 1758 it was only a majority of the judges who were of opinion that the law as it then stood empowered them to grant writs at common law in vacation. On the contrary, all the judges had been unanimous; but there was a difference on another point, which was this: whether that had always been the law! Upon that there was difference of opinion, but that it was the law in 1758 that a judge could grant the writ in vacation, was the unanimous opinion of all the judges present. Mr. Justice Foster was strongly of that opinion, though then absent, and Lord Mansfield had given his opinion in the House of Lords. It was quoted by Lord Hardwicke, and the House of Lords acted upon it by throwing out the bill then proposed as being necessary to the justice of the case. * In answer to some observations that had fallen from him upon the monstrous hardship of supposing against these prisoners that it was only necessary for somebody who happened to have the custody of them, whoever he might be, and what he might be—he might be the most infamous of men, he might be a beggar, a person to whom it might be a mockery to suppose there could be any remedy against him by bringing an action for false imprisonment—yet his friend said he had got rid of this hardship by calmly telling him that this man now on his way to a penal colony for life, might bring his action against Bacheldor for false imprisonment. This Mr. Bacheldor might be a most

respectable man, he knew nothing against him nor of him; but the rule would be the same if he had been a person whom nobody would believe upon his oath, or convicted of perjury, or the most infamous of mankind. This was no remedy at all. He spoke not his own opinion—he would use the emphatic language of Judge Foster, if he could recollect it, as a ground upon which he believed there must be some means of bringing the whole facts of the case before the court, and enabling the court to judge, not on unauthorized statements, for which the parties were not responsible, but upon evidence to be given upon oath, upon which their lordships could judge. The penal consequences to the prisoners were sufficiently high, that he need not aggravate their case; but supposing this power in the colony had not sent the parties here to be transported, but had sent them here to be executed—supposing these men were sitting here under the circumstances upon which two men did sit there two years ago—he meant Garude and his companion, who were sent there for execution from Chester—supposing their lordships were called upon to pronounce a rule consigning these men upon some such law from the colony for execution—he would ask if it would be possible their lordships could sit there and pronounce a rule for the execution of these men upon that unauthorized statement of a person who was only the prison keeper of these men—right or wrong, only to be learned from that man's statement himself, of matters of which he could not be cognizant—of matters upon which he must necessarily be ignorant; the legal consequences were the same, though less appalling than the case he had referred to.

The Attorney General would ask his friend if he was not traveling out of the return?

Mr. Hill did not know why his friend asked that question. He had not traveled out of the four corners of the return: he was using such arguments as occurred to him to show how important it was that with the little light his friend had let into the case their lordships would look at the return with the strictest scrutiny, and judge of it on the strictest legal principle. His friend said there was no hardship because in exile

they might have an action for false imprisonment!—some of them he said were convicted of high treason; if so, would his friend tell him how they could maintain an action? Others, his friend said, were in a state equivalent to their being convicted. These were not private communications, they were given under the direction of the court. If then some of these men had been convicted, and all were to be held in a state equivalent to that of a conviction, let his friend tell him how he was to maintain an action. But as he had said the man against whom the action was to be brought might be a beggar, as Foster had said, not worth a groat, and he might die and there never might be a mode of joining issue. There could not be so cruel a mockery, or which more excited feelings of indignation, as to be told you might take a remedy, which when you examined it was an illusion; better say at once, “You must submit to the arm of power, don’t seek to better your condition, patience is your only remedy;” better say this than to state that which is only to excite their hopes, and then cruelly to disappoint them. He was a good deal mistaken to find from his friend that he had been utterly mistaken in supposing the statute of the 5th of George IV., had any bearing as far as it was an enactment on this case. He did not find the slightest reference to such objection in the communication of his friend.

The Attorney General would wish, if his friend were about to make use of any papers which had been exchanged between them, that they should be read.

Mr. Hill would read them instantly, as well as his friend’s answers. The objections which he had furnished were these:

First.—There has been no conviction.

Answer.—There either is a conviction, or that which is equivalent to a conviction.

Second.—There is no judgment to warrant transportation.

Answer.—Same as conviction.

Third.—That the governor had no legal power to award transportation.

Answer.—The governor had legal power to make transportation the condition of a pardon.

Fourth.—That the transportation had not been legally conducted.

Answer.—It was legally conducted.

Fifth.—The jailer had no warrant to authorize him to receive or detain the prisoners.

Answer.—No warrant was necessary.

Sixth.—That various documents were not set out with sufficient particularity.

Answer.—That they were set out with sufficient particularity.

Seventh.—That the averments contained in the return were unsupported, and were bad from generality and vagueness.

Answer.—That they were recited, and were sufficient.

And his learned friend had added that he contended with respect to the nine persons, that they were liable to be transported according to the terms of the condition of their pardon, and with respect to the three persons, they were liable to transportation under the commutation. His learned friend said that as an enactment the 5th George IV. was immaterial to this question, and therefore the restriction in the 5th of George IV. to the reception of convicts had nothing to do with these cases; that the 5th of George IV. was very material to his friend's case, because if he understood his friend, and the argument was very ingenious, he said that the recital in the preamble of the 17th section was a legislative recognition of the validity of laws which were thus described: "Whereas, by the laws now in force in some parts of her Majesty's dominions, not within the United Kingdom, offenders convicted of certain offenses were liable to be punished by transportation, and other convicts were adjudged to suffer death who might receive pardon on condition of transportation, and there are no means of transporting such convicts to such places without bringing them first to England, be it therefore enacted," &c. His friend's use of the statute began and ended with this recital. Now, first let him observe that there was nothing so weak, so false of the facts, as a mere recital in an act of Parliament. It was every day's knowledge that these

facts were unfounded. A case was lately before Mr. Justice Coleridge in which it was quite clear that a most important fact upon which a large claim depended—he alluded to the case of the Baron De Bode—had been omitted entirely in the recital of the act of Parliament, and therefore when his friend said this recital was to be evidence, nay more, proof of the fact, for if it was a fact that there were such foreign laws, he would say it was the worst of all means of proving it. But his friend's argument was not complete there, because it might be that the colonies had power to make these laws, not *proprio vigore*, but by virtue of some power conferred upon them by the imperial Parliament; but then it went on to say they had examined the statutes so carefully, that they could take upon themselves to say that there was no statute giving that power, and therefore it necessarily followed that the power must have been an inherent power in such legislative assembly. Although, in the first place, his friends had assumed that the power which they said was recognized as a power to transport from the colonies, it was not *ad fines*, but *intra fines*, of some other jurisdiction. That was their assumption—not that it was a power to transport out of the colony, and so far from the colony as the prisoners might be taken without going into another country, over which the colony had no control; but they assumed that the power which they thus assumed was recognized as a power to go into that country. In the first place, what was there in the recital that they relied upon for proving that proposition? The words were simply these—that whereas, by laws now in force, offenders were liable to be transported beyond the seas, &c.; therefore the fact failed, but not only the fact but the law failed. They were calling upon the court to suppose that which he would submit was a legal absurdity. How could there be a law in Lower Canada enabling the governor of Lower Canada to thrust his convicts upon any other colony—Bermuda, for instance? But how had the governor of Lower Canada a right to inflict his convicts upon Bermuda? Had he a right to bring persons to Bermuda, and hold them in that species of restraint which was part of the

punishment of transportation? He apprehended it to be a principle of the general law—a general principle to be found in the codes of all civilized laws, which was, that no man could be held in restraint in any country but by virtue of the laws of that country in which the offense was committed, and in which he was convicted. Did his friend mean to say that on the 5th of George IV. (because, if that was any recognition, it recognized the state of the antecedent law)—did his friend mean to say that by that antecedent law the colony might have sent convicts to England under sentence, in order that it might be decided how they should be dealt with? Supposing that by the law of Upper Canada the convicts were to work in chains in the open streets, was it meant to be said that the governor of Upper Canada could have inflicted those convicts upon us in London, and worked them in chains in our streets? His friend might conceive there was some law to send them away, but he (Mr. Hill) would go further, and say that it required a positive law that he should be held and detained in the countries through which he might pass. All the cases put by his learned friend Sir F. Pollock were to be considered as having no foundation. His friend had said, if a ship containing convicts were to put into our waters by stress of weather, would those convicts have a right to a *habeas corpus*? He would say they would have that right, unless by treaties between the countries there were limits put to that power. There was a case in point: sometime ago there was a vessel wrecked with convicts off Boulogne, and many of the convicts were saved, but he had never heard that any of these convicts had been sent back to England, or had been detained. Their lordships had asked a question to which he had not heard his friends give any answer. If that were a part of the law of nations, their lordships asked what we were to do with a prisoner of the inquisition, or with a persecuted protestant? Was it a breach of the law of nations when we received the persecuted protestants of Louis XIV.? If it were, he hoped we might break such a law of nations every day in the year, and every century; but there was no such law; the whole law of chris-

tianity had been against it. One country was a refuge for exiles of another, without a breach of the law of nations. Did ever the Emperr of Russia, despot as he was, pretend to say we were guilty of a breach of the law of nations in giving a refuge to the Poles, who were convicted or stood in a similar situation to those whom the Captain Ross had brought here? Transportation was not banishment. One country had a right to banish its subject; either setting him free on the confines of his own country, or taking him to the confines of another country. What his friends were contending for here, was the existence of an inherent power in the provincial legislature, to enact a law which should be binding out of the province, and justify the detention and penal punishment of an offender in foreign parts of the British dominions. It struck him when his friend was arguing this question, that he forgot that great controversy on this point which took place in Parliament last session. His friend (the Attorney General) took a prominent part, as he was bound, in that very discussion, and was of opinion, as were nearly all the members in both Houses of Parliament, that transportation from Lower Canada to Bermuda under Lord Durham's ordinance was illegal. How did this case differ from that? And yet Parliament found it necessary to indemnify all who acted under that ordinance. A similar act of indemnity might with equal propriety be passed in this case. He thought that a reply to his learned friend's objection. His first objection was that there was no conviction or judgment against the prisoner; next, that the statute referred to did not justify transportation. That statute was now before the court, and would receive their lordship's most deliberate attention. He was speaking under some disadvantage as he had not been able to obtain a copy of it, but he must under the circumstances, do the best he could. Their lordships would see that the first part of it was imperative, that the penalty was a very great one, a very heavy one, being in fact a forfeiture of all the person's property real and personal. Moreover, the prisoner's punishment was to commence at an uncertain period *in future*, viz., the time of his arrival

in Van Dieman's Land. Had his punishment any reference to his guilt? No; but to be determined by the accident of the wind and waves; by the necessity or non-necessity of his coming to England. This was a punishment unknown to law, a punishment unknown to the laws of every civilized country, irreconcilable with every principle, not merely of humanity but of justice.

His next great point was this: that, supposing the transportation well begun, in its inception good, and to have been authorized to the extent of Sir George Arthur's warrant, yet this point of immense importance to the liberty of the subject arose, was his warrant good beyond Upper Canada, or did it expire in Lower Canada? There had been a transfer of authority in this case; nay, transfer it was not, for it was the expiration or fulfillment of all authority in Governor Arthur, and an assumption of authority over the prisoner by Governor Colborne. Then again the prisoner's course of transit was changed entirely by Governor Colborne, and he is sent to England upon an alleged necessity; a necessity so alleged by the jailer of Liverpool. A most important principle arose in this. Our law is so strict, as to dealing with one man by another, that it is a principle of our law that if a person is executed by any other person than the sheriff, he is considered as a murdered man, and the person who performed it as a murderer, and may be hanged as such. Could he give a stronger instance to show that it was not because a man was criminal that any person has a right to transport him. Could a person in Lower Canada, who found this man, assume the responsibility of sending him to Van Dieman's Land? On these points his learned friend had given no answer. It did not appear that her Majesty had given any directions, or signified her pleasure with regard to the prisoner. The man had come to England, and Mr. Morton, the private master of the private vessel, elects to go to Liverpool, and also elects to put the prisoner under the custody of the jailer there. If Morton had the power of detaining him, could he not have handed him over to any person? It amounted to this, that a person was selected at the caprice of a private

master, who had been met with by hap-hazard, who was to detain the prisoner, though authorized by no document at all. Suppose these men had gone through Nova Scotia, and there uprisen and overpowered the master, would they have been guilty of murder? He boldly asked his learned friend that question, and if he answered in the affirmative, he wished to know on what authority? He asserted that they would have been perfectly justified in obtaining their liberty by physical force, and England for that purpose was the same as Nova Scotia. They were held by a person who had committed an act of violence in detaining them at all, who had no authority, a self-elected keeper of them, and upon whose statement their lordships were asked to send them into exile for life. Their lordships were called on to form a most solemn precedent, which, by and by, might render the *habeas corpus* useless to the subject. But what would they do for liberty if this writ of right came to this,—that any man bold enough to put upon a return to the writ that he was convicted somewhere a long distance off, and was on his way to Van Dieman's Land, and that he held him safely until a vessel was prepared for that purpose? Any person so dealing might insure to another transportation for life. His learned friend said this was no hardship, that the person might bring his action; but perhaps the man who wronged him might leave the country. With these observations he should conclude by moving that the prisoner, Randall Wixon, and indeed all whose returns were the same, be discharged.

Mr. Roebuck, in offering a few remarks upon the present case, wished to remove from their lordship's minds an impression which possibly might have been created of the mercifulness of this proceeding. In all the law books he had not found any description of judgment like the one by which the prisoners had been subjected to detention, except in 2 *Institutes*, and Lord Coke uses this remarkable expression respecting it—he says: “A philosophical poet of antiquity had nobly described the damnable and damned proceedings of the judge in Hell,—

*‘Grossius hæc Radamanthus habet durissima regna;
Castigatque, auditque dolos, subigitque fateri.’*

And also,—

‘———— fixit leges pretis atque refixit:’

first he punisheth, then he heareth, and lastly, he compelleth to confess, making and marring laws at his pleasure, which all good judges must abhor.” This was the only authority which he (Mr. Roebuck) could find applicable to the present case. The return, first of all, set forth as a justification of the detention of the prisoners an illegal act done in Canada. It was provided, by an act of Upper Canada, that the governor might commute the sentence of death passed upon any person convicted of any capital crime other than high treason or murder. The governor could not, however, pardon for high treason or murder in any case, unless he had special instructions from home to do so, and in the present case he had no such instructions. The astuteness of the Upper Canadian lawyers, in framing the act of 1 Victoria with the view of obviating this difficulty, was only one-eyed. Again, this act gave the governor power to pardon before trial; but was it to be inferred as a necessary consequence that the trial was to be done away with? Supposing the act to have run thus: that on petition and on confession of guilt, parties might be sentenced to such punishment as the governor might deem fit, and that such sentence should have the effect of a conviction; the Attorney General would then have been relieved from a great deal of difficulty; but did their lordships believe that any persons would have petitioned under such an act, though they might under an act the provisions of which to the vulgar seemed one thing, while to the astute lawyer they signified another? He maintained that there was nothing in this act which dispensed with the trial of the prisoners, and had they been arraigned before a court of law, they might have pleaded their pardon of which then there would have been a public record. He contended that the condition in the present case was illegal. It was illegal for the prisoners to receive punishment by contract and without trial.—He passed now to another objection, which was that for transportation out of

Upper Canada, *extra fines*, there must be two concurrent jurisdictions; and this argument applied just as well to the imperial Parliament as to the colonial Parliament. He asserted that the Legislature of Upper Canada could not direct any persons to be sent to Van Dieman's Land, a place assigned for the reception of convicts, except such as the law of England permitted to be so transported, and that law never by possibility contemplated that persons should be transported without being convicted. He did not mean to say that the Parliament would not have passed any provision, however outrageous, but, luckily for the prisoners, such a provision as was needed to justify their detention, had never been passed. The Canadian law had wisely provided that parties convicted before a judge should be attended by a judge's warrant; because under the British law it was clear they could not be carried to Van Dieman's Land without evidence of their conviction. Where was the judge's warrant in this case? It was not to be found, for the proceeding was not judicial but entirely executive. These were the reasons on which he asked their lordships to discharge the prisoners. He would not, as perhaps he might do, and as ulterior proceedings might compel them to do, revert on the present occasion to the exceedingly imperfect nature of the evidence. He would not state, however true the statement might be, that the prisoners had never petitioned. Their lordships had not sufficient evidence of the facts on which these prisoners were to be deprived of their liberty for life; and he had no doubt that their lordships, in the due administration of justice, would give his learned friend and himself an opportunity, before it should be too late, of showing the falsity of the return.

The Attorney General said with respect to his own conduct he hoped that stood in no need of vindication; and he had no hesitation in avowing that (having every reason to believe that the prisoners had been guilty of high treason in Upper Canada, by engaging in a traitorous conspiracy and rebellion to detach that province from the Crown, and had been mercifully dealt with) he should do every thing in his power to prevent them from escaping with impunity, and to procure

the execution of the sentence which had been pronounced on them. The interests of this country imperatively required that they should not escape with impunity, and he would discharge to the best of his ability his duty to the Crown and to the public. He maintained that the act of 1st Victoria was framed in the pure spirit of mercy, because it only gave those against whom the charge was brought either to stand a trial before a regular tribunal of the country at the peril of their lives, or to confess their guilt and throw themselves on the mercy of the crown. There was no compulsion, no forced confession; it was the voluntary spontaneous act of the guilty men. There was not the smallest pretence for the assertion of his learned friends, that the governor of Upper Canada had no power to grant pardon for high treason. In this return which was to be taken for true, it was asserted that the 1st of Victoria, c. 10, was duly passed, and had duly received the assent of the governor. The act commonly called the Canadian act made it lawful to commute the sentence of death for high treason with authority from his Majesty, so that a person so convicted might be sentenced to transportation for life.—Chapter 7th of the act 7th William IV. related to the transportation of convicts, and clearly showed that when that act of Parliament passed, there were laws in existence and in force in Upper Canada, whereby persons might be lawfully transported. The section on which his learned friend (Mr. Roebuck) had commented, required that in the cases to which the act applied, a judge's warrant should be granted—that an instrument under the sign-manual of the governor should go to the judges, and be their authority for passing the sentence of transportation, but this had no relation to cases under the 1st Victoria, c. 10, which proceeded in a totally different mode, and where, on the petition of a prisoner, after indictment, instead of a trial a pardon was granted on such terms and conditions as the governor might think proper.

It appeared from the provincial acts of Parliament, that for a long course of years the Canadian Legislature had been in the habit of passing laws imposing transportation as a punishment for guilt, and what were their lordships now called

upon to do?—nothing short of this,—to pronounce their judgment on a return to a writ of *habeas corpus*, that all these acts were void; that every thing done under them was illegal; that convicts suffering under the sentence imposed upon them by the courts of Upper Canada, and under any other colonial law, must immediately be released. There could be no doubt that this practice had existed for many years—it had continued down to the present day, and their lordships were now called on to say that all the courts of justice and all the executive officers of the Crown had been doing what was illegal, and for which they were liable to be punished. As to the manner in which this sentence had been pronounced, his learned friend had taken a distinction between this and Watson's case. The condition of Watson's pardon was transportation for life, which was a punishment known to the law; but inasmuch as transportation for a term of years, to commence from the arrival of the convict in the penal colony, was not known to the law, although Watson might be detained, Wixon, it was insisted, must be discharged. It should be observed, however, that the period of the punishment did not constitute the essence of the punishment—it was the transportation. If there was a power in the Legislature to enact a law affixing a sentence of transportation for life to particular crimes, there must also be a power to transport for any period short of life; and the calculation might be made in any way the governor thought fit; it might be from a given event, from the period of the prisoner leaving Upper Canada, or from his arrival in Van Dieman's Land. Without at all meaning to contend that mutilation would be lawful, he maintained that any condition short of life or member would be lawful. It had been gravely argued, that if at any stage in these proceedings any irregularity or departure from the law had taken place, the detention of the prisoner was illegal, and he was entitled to his discharge; but he contended, on the contrary, that if the sentence were valid, every thing was lawful that was necessary for the purpose of carrying it into execution; all they had to see was that the sentence had been pronounced, and that what was done was in execution of the sentence. Suppose the

ship which was bringing Wixon to England had been wrecked on the coast of Lancashire, and that he with some others in similar circumstances had been saved, while the captain was drowned; could it be said, if notice of the event had been communicated to the secretary of state, and orders had been given, that any jailer, taking these persons into custody and detaining them till they could be sent to Van Dieman's Land, would be acting illegally? In that case a shipwreck would be the revocation of their sentence, and they could go to whatever quarter of the globe they pleased. He maintained that the period of their transportation not being expired, and nothing being done but what was necessary for carrying the sentence into execution, they could have no cause for complaint, and their imprisonment would be legal. In conclusion, he hoped their lordships would decide without difficulty that justice should be done, and that the prisoners would suffer the penalties to which by their crimes they had become liable.

After some remarks by the Solicitor General, on the same side, Lord Denman inquired of Mr. Hill whether it was intended to bring any more cases before the court.

Mr. Hill said his feelings at the present moment would be, not to bring forward any other of these cases, as the arguments which he had advanced would, in general, apply to all.

Lord Denman.—We understood there was a distinction in two cases, but, with regard to the others, they would follow; if one was good, all were good. Some were in the more favorable condition of having been convicted, and not having accepted a conditional pardon. We were considering whether it would be desirable to hear you now, unless no other case would be brought before us.

Mr. Hill, after consulting his learned colleagues, said his friends clearly agreed with him in opinion that they would have no advantage tantamount to taking up the time of the court in having an adjournment; and therefore, if their lordships would allow him, he would at once make a few observations in reply.

He was sure that at that late hour he should not be sus-

pected of abandoning any of his arguments because he did not repeat them, or retiring from any ground which he had previously taken. He said that these men were not kept by any power which had force in England, and that if he should consider, for the sake of argument, that they were well dealt with up to the very moment of coming within the power of the law of England, that while they were within that law they were of necessity within the ambit of the law of England and out of the power of the jurisdiction which sent them there, and therefore they were not free. The next point upon which his friends had dwelt was the validity of this—what could he call it?—not conviction; sentence he could not call it—the validity of this nondescript power and exercise of power by which the transportation had begun. It had been thrown out by his friend the Solicitor General, that the King by his prerogative could commute the punishment of treason to transportation, the prisoner consenting. There was no foundation for such an opinion. It was distinctly laid down that at common law no man, whether guilty or not guilty, felon or not felon, could be sent out of the kingdom as a transported person. Mr. Chitty, in his book, had stated many authorities for this statement; transportation or exile was generally regarded as next to death in the scale of punishments, though it might scarcely amount to punishment at all in the estimation of those who endured it. It was unknown as a penalty to the common law of England, and it was expressly provided by Magna Charta that no freeman should be banished but by his peers and the law of the land, and it was contrary to common law and to Magna Charta to say that the King had the power without the consent of the prisoner, to change his punishment from death to transportation. But this consent, which otherwise might be created at any time, was made effectual by having the conviction and judgment to which to recur if the criminal did not fulfill the conditions of his pardon, and the prisoner would go to his exile because he knew the punishment of death was still hanging over him, and if he did not act with good faith, that punishment of death would be executed upon the judgment. But suppos-

ing it to be granted that the King might commute, independent of the consent of the prisoner, the punishment of transportation for the punishment of death in treason, he would say that the governor of Upper Canada was not the King. It was matter of notoriety, that in all patents the power of pardoning for treason and murder was excluded, but he would submit that their lordships must see the power before they could know whether the governor had this power or not; their lordships were not to presume it. This was all that was necessary for him to say upon this point. With regard to the question of the necessity of a warrant, he must make a few observations. His friends had been obliged to use inconsistent arguments, because the facts on the return were inconsistent. He had been asked who could grant a warrant in this country? He had never suggested that anybody could, and this was a difficulty upon his friends, because they were referring to the warrant of Sir J. Colborne. If Sir John Colborne, who stood in the same relation to Upper Canada as England did to Upper Canada, that of a distant jurisdiction—if in Lower Canada, it was necessary to move these men about by warrant, then it was necessary in England. If it was not necessary to have a warrant in Lower Canada, they were in this state of things; whereas Governor Arthur only gave power to take them to the confines of his jurisdiction, then any person might have taken them towards their destination, and then conveyed them from hand to hand by unauthorized persons, until through a chain of various links they had found themselves landed in Van Dieman's Land. Was there ever such a monstrous proposition broached? Either there must be a warrant, or that was the state of things to which they were reduced. If Governor Arthur had the power to transport at all, why should there not have been a warrant traveling with the prisoners from first to last, to show the reason why they were detained in custody? His friend the Attorney General had said there was no reason for such a warrant, and he founded his authority on a case which he had cited—that of "*the King v. Clerk.*" His friend had said this was a commitment in execution. It was a commitment by the Court of Alder-

men that Clerk should take upon himself the office of alderman. The court had said the commitment was made in open court by the court to its officer, and therefore it would be absurd to say that the warrant must be set forth. All the officer had to say was, that he was committed upon such a judgment. But the court had said, if he was in any other person's hands than their officer, there must be a warrant, and where there was a warrant, that warrant must be set out *in hæc verba*, otherwise it was in the power of the jailer to make his case better or worse at his pleasure. There ought to be a warrant here; if not, where was the connexion between the governor of Upper Canada and the jailer of Liverpool? How did they know each other? His friend had had recourse to this extraordinary proposition, that it would be inconvenient, for if the ship was wrecked, and the warrant lost, the prisoner might go at large. This was a new doctrine; the principle of inconvenience was not to be thought of as regarded the right of a man to his liberty.—Let him put an opposite inconvenience; he would suppose that the master of a vessel was tyrannical, and chose to punish one of his men; he put him in irons, delivered him to a jailer, and he told him that he was a man convicted in some colony, and that he had been directed to take him to that country, and he accordingly left him in the hands of that jailer, and sailed away—it would be impossible to prevent that man going to Van Dieman's Land if his friend's doctrine was correct. Then there was the case of Barne, which his friend had quoted; but he (Mr. Hill) could not see how that was against him; the court said then that they found a judgment of the court; but here the case was different, there was no judgment of any court. It was an act of the governor, and not a proceeding of any court; it was an act of power, and not an act of law or justice as distinguished from power. In Saddis's case all the judges spoke of it as a judgment. His friends said their lordships would not require everything to be set out, but they were then speaking of everything anterior to the judgment. The judgment was conclusive evidence, except in a court of error, that everything anterior to

the judgment was correct. There had been no judicial view upon this at all. In the committee of nations one nation gave effect to the judgment of the court of another, because there had been a judicial examination and trial, and because the judicial mind had operated upon it. There the presumption was in favor of the prisoners. His friend had said he hoped this country would always be a refuge for wrongfully persecuted men ; but his friend was now narrowing that doctrine simply to foreigners ; he would exclude his own countrymen from the benefit of it. If, said the learned counsel, you come from France or Spain—if you spoke no language which was understood—if you are a foreigner, the English law is open to your protection—England is a citadel which no despot can approach ; but if you have the misfortune to be a native of this country, all the assistance and protection are withheld from you—all presumptions are to be made against you—your counsel are told, when arguing your case, that they are compelled to keep within the return, and the judges are continually asked to make enquiries out of it—documents are withheld, but when practically set out, and it appears to the counsel for the Crown more advantageous that they should be fully set forth, a request is made that it should be permitted. But, my lords, it is constitutional that I should be allowed to address your lordships for these men, and whatever the event of the inquiry may be, my lords, on their behalf and on my own and my friend's behalf, I tender your lordships our thanks for the patient investigation which you have given to this important case.

Lord Denman having consulted the other judges, said—We think it right to give some consideration to this very important subject, and we should wish these persons to be brought up again on Monday next.

On Monday, as soon as the court was opened, Lord Denman pronounced judgment on the validity of the return, which his lordship stated, in substance, affirmed that an insurrection had taken place in Upper Canada, and been suppressed in the course of last year ; that the Legislature there had authorized a pardon to be granted by the governor to

such persons as before arraignment should confess their guilt, and should petition for pardon, on conditions which to the governor might seem fit. The return further averred that the prisoner, Randall Wixon, was, in pursuance of that authority, pardoned on condition of being transported to Van Dieman's Land; that in execution of that condition he had been carried to Quebec, and that for want of the means of transporting him thence to his place of destination, he had been brought to England, and kept in the jail at Liverpool by way of security until a convenient opportunity should offer of transporting him to Van Dieman's Land. Some general observations must here be made. The return must necessarily be received as true, with regard to all the particulars which appear on it in its present state, in which alone it was to be examined. The court was sitting on it as on a general demurrer, or as on a writ of error on the judgment of some other court. The difficult question which might arise touching the enforcement of foreign laws in England, was excluded from the consideration of the present case, because the province of Upper Canada was neither a foreign state nor a province independent of this country in its legislation. There were existing in that country no *mala prohibita* which had been the ground of any arbitrary enactment, and the relation of master and slave was not recognized; but an act of Parliament had declared that the law of England, and none other, should prevail there. Consequently the court could take judicial notice of their legal proceedings, could understand the language in which they were couched, and ought to make every reasonable conclusion in favor of their validity. The legislative act under which the pardon had been granted was said to be void on account of two inherent vices—first, that by the law of England no man could contract for his own imprisonment. This dictum of Lord Hobart was founded on an old authority, and was cited in the case of the negro James Somerset, where this point was made out, that even if a negro sold his freedom, it was a bargain which the law made void; but that had no application to the present case, which was that of a

man who confessed his guilt before arraignment, and that his life was spared on condition of his binding himself to undergo a less severe punishment. The second objection was to the enactment that the prisoner might be pardoned on such conditions as seemed fit; as if that introduced a legislative power of punishment before unheard of, and even of torture and mutilation. But they were of opinion that these were explicitly excluded from the enactment, unless actually expressed. Transportation, no doubt, was intended to be substituted for the other punishment, because it was mentioned in the 2d section of the 5th of George IV., as having been already found in force in several of the colonies, and it was known that the substitution of that punishment for loss of life had for many years been the actual practice in Canada. Another objection drawn from the provisions of the act was, that the pardon had the same effect as an attainder, inasmuch as it caused a forfeiture of all property; but that objection was not much pressed, as this proceeding was in no degree connected with the principle of attainder. Another objection was raised to the condition of the pardon, both as to the time and place of transportation, the term being for fourteen years from the arrival of the prisoners in Van Dieman's Land, depending upon accident, or it might be wilful delay, and that it was void from its uncertainty. The answer to that was, that as transportation might be for life, *a fortiori* it might be for a shorter period. It was then said that the power to receive convicts in Van Dieman's Land ought to appear in the letters patent granting the pardon. But that was not necessary, for her Majesty had the power to make that place a penal settlement for persons after their conviction, and it must be presumed that all due preparation for that purpose had been made. The return was challenged for the want of the numerous documents from which the jailer derived his right to detain the prisoner—the indictment for high treason, the petition, confession, pardon and assent, although the assent was not required by the act. They had been told that it was their duty to have those papers before them, and to inspect them, and not to receive accounts from

a party who knew nothing about them, but to form opinions for themselves, and to judge whether the descriptions were correct or not. For those manifold objections one answer would serve. The fact was stated to the court on the return, and they were bound to receive it as true. The party who made this return probably never saw the documents, but at his peril he placed confidence in the captain of the vessel who brought the prisoners to this country, or some other person, and he was bound by the assertions which he had made on their credit, and to prove the truth of them when they were questioned in any proceedings.

The last head of objection was that the authority to transmit the prisoners to the various successive custodies did not appear. The prisoners were charged with treason committed in Upper Canada, and on their confession a pardon was granted. It was asked, therefore, how could the governor of Lower Canada receive them and transmit them to this country, and how could the jailer of Liverpool restrain them, more especially as Sir John Colborne's letters patent are directed to such persons as are authorized to receive them, and the jailer had no warrant. The answer to this was, that as soon as the pardon was granted on the presentment of a petition, the Crown had no right to enforce the conditions of the pardon and to take the necessary steps for that purpose. He had sufficient authority, and no warrant could have enlarged it. Sir John Colborne, by his letters patent, had no more authority to remove these persons than the jailer who now detains them ; but as it was physically impossible to embark them at once for Van Dieman's Land from Upper Canada, in every stage of the proceedings in which the prisoners were confined under the conditions of the pardon by which they had bound themselves, they were lawfully confined. In the section before quoted from the 5th George IV., c. 87, it was shown that transports from the colonies under a commuted sentence had been habitually received in England on their passage to a penal settlement, and the result was, that the person making the return was justified in assisting the captain of the vessel by whom the prisoners were

brought over, and remanding them to carry their punishment into effect. Their lordships had selected the case that was open to the most numerous objections, and the consequence of their decision was, that the case of Finley Malcolm, John G. Parker, Robert Walker, Paul Bedford, Leonard Watson, James Brown, Asa Anderson, and William Alves, must be disposed of in the same manner, and for substantially the same reasons, the objections not appearing so strong in those cases as in the present. There were three other prisoners, John Grant, William Reynolds, and Lynus Wilson Miller, who were not pardoned under the legislative act, but, according to the return, had been duly convicted before the court of Upper Canada, one of treason and the others of felony. Their lordships had anxiously considered whether the allegations to them were sufficient, and they thought they were. In coming to this opinion they had principally relied on the authority of Barnes' case, in the 2d vol. Rolle's Reports, and "the King and Saddis." These three, therefore, must also be remanded.

After judgment, Mr. Hill moved for an attachment against Mr. Bacheldor, for making a false return, and the day was taken up by that gentleman and Mr. Roebuck in supporting the motion. The former, after a speech which lasted several hours, concluded by saying, he had now to bring under their lordships' consideration the affidavit on which he moved for an attachment against Mr. Bacheldor. The affidavit was made by William Waller, who described himself as clerk to Messrs. Ashurst and Gainsford, solicitors for the prisoners. He states that on Saturday the 29th of December last, he received from the governor of the borough jail at Liverpool the document, of which a true copy is annexed to his affidavit, and that it was delivered to him as a copy of the warrant under which the prisoners were detained. In that document the names of all the prisoners were set out, and among others was the name of Leonard Watson, whose case he (Mr. Hill) was now bringing under the attention of the court. The deponent further said, that at the time it was delivered to him he examined and compared it with the ori-

ginal warrant of commitment ; that he was informed by the governor of the jail of Liverpool aforesaid that the prisoners were held in custody solely on the authority of that warrant so produced ; that he had no other document or warrant whatever connected with the prisoners ; that he was informed by the governor and town clerk aforesaid that the return would be made by setting out the warrant under which the prisoners were detained ; that at the time the return to the writ issued being read in court yesterday (Monday) deponent saw the original returns prepared by Bacheldor ; that he read the return so prepared in the case of Leonard Watson, which simply set out the warrant of which a copy is annexed to the affidavit ; that while at Liverpool he communicated a copy of it to Messrs. Ashurst and Gainsford, and that he believes the instructions to counsel consisted, among other things, of a copy of that warrant. He had now read from beginning to end the important affidavit on which, as subsidiary to the other question, he humbly moved their lordships for an attachment against Mr. Bacheldor. One advantage which would be gained for the prisoner by that motion was, that at length their lordships would have the warrant of Sir John Colborne immediately before the court, which his learned friend the Attorney General had struggled, and struggled successfully, to keep back from their view. Their lordships knew that by the habeas corpus act it was made imperative on the jailer to give the party the warrant on which he was detained. The court thought he (Mr. Hill) was premature in calling their attention to that point before ; but he now insisted it was the duty of the jailer to set forth that warrant *in hac verba* in his return ; for whether it were a right simply at common law, or a right at common law regulated by the statute of Charles II., was immaterial, since all the text writers, and all the distinguished men who had given any opinion on the subject, agreed in stating that that was not intended to give new rights, but to give better remedies to the subject. He therefore inferred that the subject had at all times a right to see the warrant on which he was detained ; and that the warrant being mentioned in the statute was

nothing but a recognition of the common law right. If it were necessary, however, he should submit that rights under *habeas corpus* were rights under the statute as well as at common law. But he apprehended the party in this case was not committed in execution of any sentence within the statute—he was not a convicted person; he was to be transported, not under a sentence, but by an act of mercy—not because he was convicted, but because he was pardoned. That was the statement of his learned friend; but still the jailer was bound under the *habeas corpus* act, and also at common law, to show the warrant under which the prisoner was detained. But if he were not bound to do so, he had done it. And why was the prisoner to be provided with a copy of it? Was it that he might forget, burn, or destroy it? Was it to be of no use to him? And how could it be of use to him but by bringing it before their lordships? The jailer was bound to set it out as part of his return; and in not setting it out as part of his return he had been guilty of a gross breach of his duty. He was confident their lordships would find no case which would justify the jailer in that course. This was not a case in which there had been no warrant. What was the value of the warrant, or how far it justified the jailer in detaining the prisoners, was nothing to the purpose; he had a warrant, and dealing honestly and fairly by those unfortunate men, he ought to have put the court in possession of it. It appeared from his own confession that the jailer of Liverpool had no other documents before him but this warrant. He would ask whether a public officer was dealing rightly with the liberty of the subject, who not being in possession of any documents on which he could rely, chose to allege on hearsay, the value of which their lordships had no means of estimating, not knowing from whom it came—to allege on hearsay which was of no value at all in courts of law, that the prisoner, Leonard Watson, petitioned in Canada and confessed his guilt? He put that question in order that the people of England might know what they had to trust to. Had a jailer a right to set forth in his return upon information which the law of England would not transfer

the value of a pin, a number of facts of which he could know nothing? He humbly and respectfully submitted that any public officer—and every jailer in England was a public officer under the special superintendence and control of that court—any such officer being called on to satisfy the King's judges why he detained a certain man, and putting on record a number of facts occurring, if they ever occurred, in a foreign country, and of which he confessed he had no knowledge, withholding the original warrant from the eyes of the court, was guilty of a gross breach of duty. Had the jailer not done so in the present instance? He ought clearly to have refused the custody of these men under such circumstances. Why, if it had been only a matter of a single bale of goods, the rights and interests of consignor and consignee must have been more fully set forth, and if the ship's papers had shown no better right in Captain Morton to the cargo than had been shown to keep these men, he very much questioned whether the ship itself would not have been liable to seizure. Was it then that the law took care of property, and not of the rights of liberty! Should a vessel be allowed to come into our waters, holding twelve men in constraint, without showing any warrant or right, and transfer them to a jail in Liverpool? And would he, after daring to put on the files of the court such a statement as he had done, confessing, as he did, that not one single scrap of paper justified him in making it—so dealing with the liberty of the subject, would that officer be held by their lordships to have done his duty? He would show their lordships that not only had Mr. Bachelder most rashly and criminally made statements which he did not know to be true, but that he had made statements which he knew to be false. He was now moving on the part of Leonard Watson, and their lordships would find it stated in this return that Leonard Watson was directed by the warrant of Sir John Colborne to be taken on board the bark Captain Ross. and that he was brought to Liverpool on that authority. That was stated in the return.

In the warrant before their lordships there was a recital of the most extraordinary and unmeaning kind that could be

imagined. In the recital the name of Leonard Watson was to be found, and he was described simply as a convicted man. There was no allegation that he was convicted, but he was so described; and then, in the operative part of the warrant, which directed Morton to take certain persons on board for the purpose of transporting them, the name of Leonard Watson was not to be found. The jailer at Liverpool had therefore returned that which not only was unfounded so far as his own knowledge went, but of which he had complete knowledge, that the facts he put on the file were false.—Could it for a moment be supposed that that was within the duty of the jailer of Liverpool? He must not be told that the warrant was unimportant. Was it for the jailer of Liverpool to make that discovery? What had he, in the teeth of that great act of Parliament, the *habeas corpus*—what had he to do with keeping back any evidence he might possess in such a case? Why should not the prisoner have the benefit of all the facts that might tell in his favor? What interest ought the jailer to take except to discharge his mind of all the knowledge he possessed, and to place the court exactly in the same state as himself with respect to a knowledge of all the facts of the case? Their lordships would look carefully at that warrant; they would see the many legal blunders it contained; and that they might well suppose had been the reason why they had not been hitherto able to see it. Of this he complained. From whatever quarter the instructions might come, he complained, and bitterly complained, that every document had not been placed before them. Supposing the warrant inaccurate either as to matter of law or fact, who was there, he asked, standing behind the jailer of Liverpool, who had a real, an honest interest in keeping these defects of the instrument from the knowledge of the court? Wherever the instructions came from, they were not worthy, they were not consistent with the care which every government, and which he was bound to suppose our own government, had for the liberty of the subject.

He had now concluded his long task, and very imperfectly placed before the court those reasons for which he urgently

implored their lordships to see that those men were not sent into banishment until it was proved—until their “lordships knew,” as the writ had it, wherefore they should be sent.—He had not argued the case without the deepest anxiety.—Twelve men, their fate, and that of their families, depended upon their lordships’ adjudication; but he would freely confess their fate did not, in his mind, constitute the highest importance of the matter now before their lordships. It was the people of England, now living and yet to be born, who were mainly interested in the result; and when he thought of that, he might well say with the greatest of Roman orators, “Non solum animo commoveor sed etiam toto corpore horresco.” This country had hitherto been famous for setting an example to the nations; feeding the great lamp of liberty and diffusing its sacred light over the world; it depended on their lordships’ decision whether she would be shown to deserve that lofty station, or whether her people were worshipping an idol of stocks or stones, which when applied to by the Englishman to save him from the greatest danger under death that could occur to man, was powerless to help him. Whether this country would support what her great and glorious Milton called “the high prerogative of teaching the nations how to live,” or now confess to the laughing and scorning world that the writ of *habeas corpus* was a mere idle invention for lawyers to impose on the world as liberty; but where it was required to oppress and punish a man without inquiry, excellent reasons, sufficient precedents, were to be found at all times, good and bad, in the books, to show that there was no power to inquire whether a man who confessed he knew nothing about the matter spoke the truth, and yet after that confession, and on that confession, their lordships were still bound to send those men to banishment.

CHAPTER XVII.

Remarks upon the Trials, &c.—Mental Sufferings.—Kindness of Friends.—Distinguished Visitors.—English Feeling with Reference to the United States.—The Author's Vindication of his Conduct to an English Gentleman.—Limited Number of Voters in Great Britain.—English Elections, Bribery, &c.—Appropriations by Parliament.—England's Poor.—Pardon of William Reynolds.—Pardon of the Nine Untried Prisoners.—British Injustice.

ALTHOUGH to the general reader the details of our important trials are perhaps uninteresting and dry, yet I have not hesitated to introduce the most essential points, in order that the truth may be known with regard to British justice. Britons assert, and the world in general believe, that British laws are the perfection of reason, and that the fountain of justice in "*free and happy England*," is so pure, that the wronged and injured man has but to touch the tip of his tongue to its waters to be cleansed of his leprosy. They tell us of the independence, wisdom and uprightness of their judges in administering law to the subject; and that the highest and lowest in the land receive at their hands impartial justice; yet the facts in this case prove the reverse.—The *habeas corpus*, that great bulwark of English liberties, as it is called, according to the decision of the judges of her Majesty's Court of Queen's Bench, turned out to be an illusion, a weapon which might be used to oppress the subject, but powerless to shield him from usurpation and cruelty. I will not say that the judges were corrupt, but such was the general impression upon the minds of those who heard their decisions. A whig government was in power; under that administration Canada had rebelled, and we had been sent there; and these upright judges who were also whigs, scrupled not, in the discharge of their high duties, to declare, in

the face of law and justice, that we were legally and justly dealt with. Not so the Court of Exchequer. Upon the same facts, and under the same law, the learned judges decided that the nine men who had not been tried, could not, by the laws of England, be transported, and that the government must either try or discharge them. The judges of the Court of Exchequer were *conservatives*, and opposed to the whig administration. The two decisions, affecting so materially, but differently, the same case, are a melancholy proof that law and justice in England are no better than in other parts of the world; and that there, as elsewhere, the judicial and executive powers are so blended and interwoven, that the former may be used as a cloak to cover up the abominations of the latter.

During this long and anxious period, our sufferings arising from hope deferred and the uncertainty of the future, were often intense and severe. Mental torture, to be endured with becoming firmness, requires a mind well disciplined in the school of experience. The kindness extended to us by friends, and the general good feeling manifested by all with whom we came in contact, softened the rigors of imprisonment, and lightened the heavy load which weighed upon our spirits. Not a day passed, but some little act of kindness, performed with scrupulous modesty, made us feel that there were kind and warm hearts without by whom we were remembered. To our legal friends we were not only indebted for the investigation of our cases, with the heavy expenses thereby incurred, but they were not content with this, and daily sought, either by personal visits or letters, to rob the prison of its power to pain. Their eloquent appeals in our behalf in court, won them the applause of the whole country.

Gentlemen, and sometimes ladies, from all parts of Great Britain, frequently called at Newgate to see the Canadian prisoners, as we were called, and as they generally wished to spend some time in conversation, we had an excellent opportunity of becoming acquainted with some interesting traits in the English, Irish and Scotch character. Sometimes the

nobility were our visitors, but they looked upon us as republicans who would level them with their fellow men, and seemed rather shy. The Grand Duke, Prince Alexander of Russia, came into our room one day attended by his suite, among whom was Count Orfolk, the celebrated Russian financier. His Royal Highness appeared to labor under no difficulty in comprehending the nature of our crimes, as nothing is more common than state prisoners in the prisons of his despot father.

The aristocracy of Great Britain have, generally, a strong prejudice against the United States, arising, no doubt, from the influence of the equality of our institutions which are so inimical to the perpetuity of their own lordly prerogatives. Already have they felt that the light of our *western star* is destined to guide their wronged and suffering subjects to the attainment of a better government, which will strip them of their power. I was often amused to hear them predict its downfall. Ten years was the utmost limit which they would allow for our existence as a national republic. "In ten years," said they, "you will have a King, and a House of Lords." I told them they had been predicting the same thing for the last sixty years, and that long before my country was cursed with a *King*, theirs would be blessed with a *President*. All other classes however appeared to regard American institutions with better feelings; and it was evident to me from their conversation, that they only wanted the power to copy the example of the western world, and throw off the galling yoke which Englishmen begin to feel sits too heavily on their necks. The government have sought by every possible means to prejudice the public mind against the United States, and for a long time were successful; but there are too many independent newspapers now to admit of such unworthy expedients. Even at the present day, the government papers are in the habit of seizing upon every little occurrence which may chance to happen on our side of the water, that can, by exaggeration or open falsehood, be made to bear either against American character or American institutions.

Many of our visitors found fault with the Americans for assisting the Canadians in the rebellion, even while they justified the latter, and I was often called upon to vindicate my own conduct, my comrades, with the exception of Reynolds, being British subjects. Upon one occasion a large company called to see us, among whom was an aged and respectable looking gentleman, dressed in mourning, from the north of England. He fixed his dark eye haughtily upon mine, and sternly demanded, "Are not you, sir, an American?"

I replied, "I have the honor, sir, to be a citizen of the state of New York."

"Did you live in Canada when the rebellion broke out?"

"No, sir."

"Had you any property in that country?"

"I had none."

"Then what business had you to meddle with the affair? I do not blame the Canadians so much if they were badly governed; but there is no excuse for you Americans, who gratuitously enlisted, and you deserve to be punished. I must confess I do not pity you nor any of your countrymen who are suffering in the same cause."

"What right, my dear sir, had Lord Byron to go to Greece? His case was exactly the same, yet the British government encouraged his enterprise, and you Englishmen are proud of his conduct on that occasion. What right had General Evans and his seven thousand followers to go from this country to Spain, during the late troubles there, to take a part in the dissensions of that ill-fated country? Theirs was a parallel case; and yet you blame me for copying an example which your countrymen have ever been found ready to set."

Before I had finished the last sentence, however, my opponent turned deadly pale, groaned and staggered from the room. Upon inquiry I learned that he was wearing mourning for a favorite son who had followed General Evans to Spain, and there fallen in battle. Much as I regretted wounding the feelings of a bereaved father under such circumstances, I could not but regard the answer which I gave him as a practical and just one. Upon all political and national sub-

jects, Englishmen at once detect a mote in the eye of a brother while unconscious of a beam in their own. They talk of their liberties, as if they were the only nation in the world who could boast of freedom of any kind; and yet with a population of 27,000,000 but about 800,000 are allowed to vote in electing the representatives of the people for Parliament; making on an average, but one voter to every thirty-four persons! Were even these independent voters, the case would be better that it now is, but they are mostly tenants who are compelled to vote according to the will of the landlord on pain of his displeasure, involving the ruin of their families and business. The *ballot-box* would remedy this evil, but it would seem the government are unwilling to permit even this limited number to exercise their right conscientiously. The consequence of thus voting *viva voce* is bribery without a parallel in the history of any nation upon earth.—No candidate ever dreams of being elected without spending from thirty thousand to one hundred thousand pounds in buying votes! A candidate without a princely fortune to expend, has no chance whatever of succeeding. Out upon such freedom! Millions are constantly starving for bread in this “free and happy country,” while an abundance of foreign wheat is rotting in bond at all the principal ports. But the landed aristocracy upon whom the government has been dependent for the enormous loans to support its unjust wars and criminal extravagances, which have finally swelled the national debt to nearly one thousand millions sterling, must be allowed to fatten upon the souls of the poor! Yet the late repeal of these obnoxious corn laws, gives reason to hope that reform may eventually give to the poor of England, a substance in lieu of the dim shadow which they call freedom.

Among the items of appropriation voted by Parliament while I was in London, I noticed two which appeared to me to be characteristic of the nation. “Seventy thousand pounds sterling for her Majesty’s stables, and thirty-five thousand for public education in the kingdom of Great Britain and Ireland!” This by the people’s Parliament—so called. A nation of FREEMEN truly!—But the aristocracy dread the light of edu-

cation. If the poor were educated that they might know and understand their rights, their own palmy days would be speedily ended, and therefore they give seventy thousands to her most gracious Majesty's horses, and half that sum to educate several millions of poor children. Boundless extravagance, starvation and despair, are every where visible at the same time; and within a stone's throw of her Majesty's palace, and stables, poor wretches may at all hours be seen, accosting the stranger as he hurries past, with, "Please, sir, a penny to buy a morsel of bread—I have eaten nothing for a day;—for God's sake, sir, a single penny and heaven will bless you!"—Not a week passed while I was in London, but one or more persons were committed to Newgate for stealing bread to keep themselves from starving! Sometimes they were found guilty and transported for seven, ten, and fourteen years, for this offense. These are but a few instances of an aggravated nature which constantly occur in England, and are introduced not so much to ridicule that nation, as with the hope of leading the reader to prize more highly the blessings of our own happy country.

Through the intervention of Mr. Stevenson, at that time minister plenipotentiary and ambassador extraordinary of the United States at the court of St. James, William Reynolds obtained a free pardon, on account, it was said, of his being the youngest of our party. He was actually three years older than myself, but had, fortunately for himself, and as unfortunately for me, stated his age when captured at eighteen years. Mr. Stevenson exerted all his influence to procure the same boon for me, but was unsuccessful. The liberation of my friend, left but two, (Grant and myself) besides the nine untried prisoners. Our cases had not been investigated in the Court of Exchequer, because, said our friends, "the government will never be mean enough to transport you, if all the others with whom you have been so long connected in the participation of incipient punishment, are discharged, and you will, as a matter of course, be pardoned *free gratis*." This reasoning, however, turned out to be poor logic to us. He who trusts to the Devil for the printing and circulation of

the Bible, stands a favorable chance of being disappointed. We might as well have believed that his Satanic Majesty would engage in the Bible trade, as that the British government would do an act of either justice or mercy, unless compelled to do so by powerful motives. Patents of pardon were, in consequence of the decision in the Court of Exchequer, made out for our more fortunate companions, who were accordingly discharged. In these patents of pardon it was stated that her Majesty's royal mercy was extended to them in consequence of their having already suffered sufficiently for their crimes. Now, although they had been in prison a few months longer than Grant and myself, they had never experienced the ordeal of a trial and sentence to death which we had, and their sufferings could not be said to exceed ours. They, too, were in general the first fomenters of the rebellion, and in this respect were the more guilty party, if guilt there was in the affair; but these considerations were in vain urged by our friends in our behalf. The government were inexorable. The truth was, they were obliged to liberate the others, which so enraged them that they determined to punish us whom they had in their power, out of mere spite; and our friends were insulted when they dared to ask for the least favor either upon the grounds of justice or mercy to us.

With heavy hearts we bade adieu to our more fortunate companions, and relinquished all the thrilling hopes of freedom which we had indulged for so many months. Better had it been for us if those hopes had never been awakened, than that they should have been so cruelly blasted, after being cherished for so long and anxious a period.

ON BOARD SHIP WELLINGTON, }
July 29, 1839. }

DEAR SIR,—I cannot express to you the pain I felt on hearing of your departure from Newgate for Portsmouth on the Monday following my liberation. I called on Mr. Francis Hall on Saturday evening,—the day I was liberated,—but he was not at his lodgings, and I could not see him until Monday morning; I then called on him early, and breakfasted

with him, and urged him to see Mr. Stevenson and Mr. Webster in your behalf. Immediately after breakfast he went to see Mr. S. Mr. Webster was out of town to some watering place, but Mr. Hall said he would see him as early as possible and have an interview with him, and endeavor to interest him in your behalf. Mr. Ashurst was also writing Lord John Russell, and I had much hope that you would soon follow me from captivity. But what was my horror and dismay on meeting Wixon about noon, and learning that he had received a letter from you the night previous, and that you were then embarking for Portsmouth. I afterwards went to Mr. Hume, and subsequently called on him again, at his own house, and he stated to me that he had had an interview with Lord Melville, Lord John Russell, and Marquis Normanby, but that he had received no satisfaction from them. They appeared to censure Mr. H. for wishing to get all the rebels clear, and gave him no encouragement whatever. I am exceedingly surprised at the unwise course of the Home Government, in carrying their extremities against you and Grant. This step must only have a tendency to show the public mind, that those already discharged have been so, not on the ground of mercy or leniency, but entirely on the ground of right and law. It has the effect to elevate the reputation of our lawyers, and to distinguish them in the eyes of the world, for without their efforts, we who have been discharged would now be in the same boat with you; whereas, if the government had discharged *all*, including you, Grant, Gemmell and Beemer, on the ground of mercy, they would have taken away that lustre from the acts of our lawyers that now so much shines upon them.

Mr. Hume told me that he should never lose sight of you, and he hoped that steps would be taken in Parliament to procure the liberation of all under sentence of transportation.

Do not think that I have forgotten or shall forget you. I do not know in what way I may be useful to you, or your fellows. Should any opportunity occur of enabling me to do so, be assured it shall be my greatest pleasure.

Give my respects to your fellow prisoners, and may God

bless and keep you safely. May you put your trust in Him, and may He be your deliverer.

Your sincere friend,
Mr. LINUS W. MILLER.

JOHN G. PARKER.

CHAPTER XVIII.

Removal to the Hulks.—Incidents of the Journey, &c.—Portsmouth.—Scene on the Deck.—The Convict Garb.—Inspection, &c.—Shameful Severity.—Gemmell's Account of Wait and his Companions.—Beemer.—Sleeping Apartment, &c.—The Dockyard.—Sufferings, &c.—Complaints to the Government.—Mr. Carver.—Chelsea Beach.—Attempt to Abscond.—The Old Traitor.—Dialogue with the Captain.—Regulations of the Hulk.—Prevalence of vice and crime.—The Chapel and Clergyman.—The Hospital.—The Dying Convict.—The Bay Ship.—Spithead.—Letters, &c.

ON the 14th July, John Grant and myself were called, long before break of day, to be ironed, preparatory for our journey to Portsmouth. Strange as it may appear to the reader, a confinement of six months in Newgate had actually produced an attachment to its old, gloomy walls; and every object in the room I had occupied with my companions, had become dear to me through familiarity, local associations both pleasant and painful, and the recollection that it had been to me a habitation, a kind of resting place in my weary pilgrimage, where I had found repose while drinking from the bitter cup of anxiety, suspense, expectation, hope deferred, disappointment and despair so strangely intermixed. Here too, I had parted with my late companions; here I had found friends who had kindly and deeply sympathized with me in my afflictions; and here I had often joined in supplications to the Almighty for His grace and mercy to enable me to tread with cheerful step, the rough and thorny road in which I was doomed to travel. Had I, however, been going to my liberty instead of the hulks for transportation, I doubt not I should have experienced similar sensations in leaving my strange home. We had taken leave the evening previous of the governor

who had treated us very kindly, and also of my excellent friend, the Rev. Mr. Carver, the prison chaplain.

We were speedily equipped with chains, and hand-cuffs, and marched first through the court-room, called the Old Bailey, into a dark passage underneath the prison, used as the burial-place of the felons who were executed, more than two hundred of whom, the turnkey informed me, were there interred, and over several of whose graves I stumbled on the way; and at last emerged into the open Old Bailey street. Here we found a covered van, large enough to hold thirty persons, and drawn by three spans of horses, into which we were crammed, and a ring in our chains slipped on a bar of iron which ran through the entire length of the wagon.— There were twenty six English felons in the van before us, all chained to this bolt, and they, it now appeared, were to be our companions, although hitherto we had been strictly forbidden to speak to persons of their character. “All men are born free and equal,” said the turnkey to whom I remonstrated against this inconsistency and injustice, and being an American, I was obliged to accede to this practical illustration of my national FIRST TRUTH, with as becoming a grace as possible, although, I confess, I heartily wished her Majesty’s advisers reduced to the same glorious level.

The fellows were supplied with beer, pipes and tobacco, and were exceedingly boisterous, laughing, singing and making as merry as any pleasure party going to a *fair*. Crack! went the driver’s whip, and away we flew through the streets of London, at the rate of ten miles an hour. At daylight we were beyond the suburbs, and traveling through as fine a section of country as I ever witnessed. The scenery in some places was to me surpassingly beautiful and lovely, but only served to make me feel most keenly the bitterness of bonds, and the cruel injustice of our enemies.

Grant and myself being seated at one end of the van, the other being also open, were nearly suffocated with the fumes of tobacco, beer, &c., from our jolly fellow travelers. A strong current of air, from our speed, passing through the van, we had the benefit of inhaling it the whole journey;

and by the time we arrived at Portsmouth, (distant seventy miles from London) about 2 o'clock, P. M., my patience was quite exhausted, and I was illy fitted to bear with becoming fortitude the indignities still in reserve for me. The streets of this great sea-port town, through which we passed, were exceedingly filthy, and the buildings generally low, old and inferior.

A scow rowed by convicts conveyed us to the York Hulk, an old seventy-four which was moored in the harbor, three-fourths of a mile from shore. The first objects which attracted my eye, upon gaining the deck, were James Gemmell and the traitor Beemer. The former seemed both pleased and grieved to see us, but the countenance of the latter was as dark as the hidden secrets of his evil heart. We were ranked up in line on the deck, and Capt. Nicholson came from his cabin, accompanied by his convict clerk, who carried writing materials for taking notes. They began at one end of our line, taking each person in rotation, and asking name, trade, age, &c., the answers to which were carefully taken down by the clerk. I observed that the convicts pulled off their hats, and when addressed by either captain or convict clerk, raised the fore finger of the right hand to the head, evincing the most abject obsequiousness in all their actions. This was entirely new to me, having always been treated by the authorities and others with at least decent respect, and taught to consider myself in no manner degraded on account of my bonds. The foul injustice which I had just suffered at the hands of my enemies in London, the galling chains on my limbs, the company of convicts among whom I had been thrust, and the fumes of tobacco and beer which I had been enjoying all day, were brewing in my brain, and I felt no disposition to treat this new dignitary, or any body else who wore the British uniform, with even common civility. When he approached I stood stiff and erect, and as he was but a short man, looked down upon him with all the dignity and importance I could command. He appeared somewhat astonished at my audacity, as I thus

stared him full in the face, without doffing my hat, or intimating as much as "your servant, sir."

"What is your name?" he demanded in a stern voice.

"Miller."

"Is that all of your name?"

"My name is Linus Wilson Miller."

"That is a long name. Pray what is your trade?"

"I never learned a trade."

"Pray what have you learned that is good?"

"To respect myself."

"Did you ever learn manners?"

"No! such kind of things come nat'ral in my country—all second nature; don't require to be taught."

"Pray what uncivilized part of the earth do you claim as your country?"

"I am an American."

"A Yankee?"

"Yes."

"And you have no trade?"

"No; I have a profession."

"What?"

"I was bred to the law."

Oh, a lawyer." Aside to the clerk,—“put him down a laborer.”

"What is your age?"

"Twenty-one."

"Where were you tried?"

"At Niagara, Upper Canada."

"What is your crime?"

"A virtue."

"Indeed! pray for what virtuous action have you been sent here?"

"For sympathising with the Canadians."

"What is your sentence?"

"That you will learn from the warrant under which you hold me, and assume the right to ask me these questions. If you have any documents of the kind, you can refer to it for any further information you require. If you have not,

you may as well send me ashore in that old scow in which I just came off."

"You are an impudent fellow! Why do you not take off your hat, and say 'sir,' when I address you?"

"In my country we do not mind such small matters; but you English have taught me to be unmannerly."

"Take off your hat!"

I lifted it slightly from my head, and replaced it.

"Learn to say 'sir,' to me."

"Sir, I have hitherto been spared the degradation which you seek to impose upon me. I am a state prisoner, and entitled to different treatment from this."

"You are at the hulks now, no matter where you have been, how you have been treated elsewhere, or what your crime is. While here you will obey the regulations of the ship, and I will be respected."

My friend Grant answered his questions in a similar manner, and the captain set us down "*hard cases*," as we soon learned to our sorrow.

After having been searched for tobacco, money, &c., which were strictly prohibited, our irons were taken off, and our hair sheared close to the head. We were then ordered to wash in a large cistern, in which the whole van-load of prisoners had cleansed their filthy carcasses. Our private clothing was at the same time taken away, and its place supplied with convict apparel, consisting of a gray jacket, waistcoat, *knee-breeches*, long stockings, striped shirt, checked handkerchief, thick shoes, and sheep-skin cap. In this Quixotic garb, we were ushered into a large ward, where sat the captain and two other subordinates, for the purpose of questioning us and taking our descriptions, that we might be identified in case of an escape. We were ordered to expose our persons to the waist, for that purpose. This was an indignity which I little relished, but any objections urged on my part would have answered no other purpose than to excite suspicion of a wish to abscond. I now began to learn that a prisoner must have no will of his own, no feelings, no soul; the discipline to which he is subjected, being

intended not only to torment the body, but to crush and destroy all those attributes which constitute the man as distinguished from the brute. Happy is it for him if his moral feelings are so deadened, his soul so debased that he can not feel the rackings of the wheel of mental and moral torture which the god-like divinity of the English law has constructed for his *reformation*.

To my astonishment, irons, weighing about ten pounds, were riveted upon our limbs, the same as upon the English felons, notwithstanding that Lord John Russell had sent strict orders to the captain of the hulk that the Canadian prisoners should not be ironed, put to labor, or placed in the immediate company of the other prisoners. I protested in strong terms against this, but to no purpose. Soon as the irons were on, an overseer called us; we followed him down three pairs of stairs into the hold, where he pointed to two large logs, weighing, I should judge, about seven hundred pounds each, and ordered us to lay hold of and carry them to the upper deck. We had, during the process of washing, &c., resolved to obey orders, no matter how unreasonable they might be, and complain, if necessary, to the higher authorities, and, therefore, without hesitation took hold of one of the logs as directed but were unable to get it higher than the first step. I told the overseer that however anxious we might be to enjoy the entire pleasure arising from this novel exercise, we were unable to do so, and he must call more help. He took the hint, and a half dozen lazy fellows were forthwith summoned to our assistance. When we reached the upper deck with our burthen, I saw the captain peeping through the cabin window at us. He had ordered the overseer to select Grant and myself for this business, thinking from our conduct at the first introduction, that we would certainly rebel and he should have a chance to punish us; but in this he was mistaken. I felt sensible, upon reflection, that I had treated him with almost unpardonable rudeness, and determined to make amends for it in future. He was an aged man and I sincerely repented having insulted him, on

account of the country he served. The sequel will show that we both misjudged each other.

Gemmell related to me the history of himself and companions, as far he knew, since our separation at Liverpool. He had spent most of his time in the hospital, but was conversant with all the incidents relating to his comrades during their stay; and told many anecdotes, which although interesting, cannot be introduced into this work. They had not been required to labor, were ironed with a bazzil only, (a ring riveted upon one leg, just above the ankle, while Grant and myself, with the English prisoners, wore one on each, connected with a heavy chain,) were confined in a ward by themselves, and exempted from many of the prison rules. They had, however, suffered severely from cold, hunger and anxiety of mind; a lively description of which may be found in Mr. Wait's narrative. Hopes of freedom and an investigation of their cases were held out to them to the last, (whether in good faith or not I can not say,) but I fear it was only to quiet their minds. On the 12th March, they were, with but a few minutes warning, shipped for Van Dieman's Land. Gemmell being sick in the hospital at the time, was detained. As for Beemer, he had busied himself with writing to the government a most exaggerated account of the Captain Ross affair, and claiming a free pardon for his treachery on that occasion. He remained at the hulks when the others were sent away; the government having in contemplation the granting of his request, but he still continued his importunities, and in every application represented the mutiny more aggravated than before in order to enhance the value of his service, until he at last contradicted himself and disgusted them. Copies of his letters afterwards fell into my hands, the first of which was as fair a version of the affair as could have been expected from a traitor; but according to the last, the annals of *piracy* present nothing half so foul and revolting as were our intentions.

At night we were mustered into a ward with Gemmell and about forty English prisoners. At half-past seven o'clock prayers were read by one of the convicts, during which the

overseers were present to maintain order, but the service was only a solemn mockery. This was the first night that I ever went to *roost* in a hammock. It required some practice to get into it, and we found ourselves sprawling on the floor, chains and all, before we succeeded in mastering the difficulty. They are preferable to a hard shelf for sleeping.

The next morning when the men were mustered for labor we were called with the others. I protested strongly against this, stating to the captain that it was a violation of all the rules hitherto observed by the government in our treatment, and that as state prisoners, we were entitled to exemption from servile labor. His only reply was, "That will do, that will do, pass on." Descending the rope-ladder over the side of the vessel, we took our places in a launch with about sixty men, and were rowed to the Portsmouth dock-yard.— On our way we passed under the bows of Lord Nelson's flag ship, in which he lost his life in the battle of Trafalgar. More than a hundred men-of-war were lying in the harbor, many of them old and unfit for service. Several hundred workmen were employed upon new vessels on the stocks, and three "first-raters" were nearly ready to be launched. A steam-boat was lying at one of the wharves to be loaded with coal, and in ten minutes we were as black as the most sooty sweep of London. My long incarceration in prison and the physical and mental sufferings to which I had been subjected, had so enervated my frame as to render hard labor almost impossible, yet I worked very hard, occasionally sitting down to rest when greatly fatigued, but always commencing again without being ordered by the overseer, whose eye I remarked was constantly upon me. Night found me perfectly exhausted with the toils of the day, and my hands and feet sadly blistered.

It may be imagined that this beginning of slavery was worse than death itself, and that my sufferings, physical and mental, were intolerable. How my soul loathed the menial services I was compelled to perform, as well as every object around me connected with the tyrants who oppressed me.—

Great as my physical sufferings were, those of a mental nature were far greater, for I now felt myself a SLAVE, degraded, but thank Heaven, not debased. My soul was as free as ever, and as new trials came upon me, I was granted strength to bear them, I trust, with becoming fortitude. Despair, with his grim, ghastly visage, would sometimes haunt my spirit, but hope was every ready to chase the monster away, and I had too much pride to allow my enemies the satisfaction of crushing and breaking an American's spirit. If I was ever tempted in my darkest hours to despond, visions of my native land, of *home*, and kindred spirits there, who looked, though vainly, for my return, would nerve me to grapple with the worst, and I always came off more than conqueror.

The next day we were employed in skidding up large logs, of which the dock-yard was full, and this continued two weeks, during which time I was narrowly watched by the overseer, who, however, found no occasion for fault, while he was under the necessity of continually threatening the English prisoners with a flogging, on account of idleness and general bad conduct. In the mean time, I demanded writing materials of Captain Nicholson, for the purpose of complaining of our treatment to Lord John Russell. He complied with a very ill grace; but the regulations to which he was subject, as well as myself, allowed me that privilege, although it was his also to inspect all letters, and send any counter statements with reference to complaints which he might deem proper. My letter was not couched in the most humble and moderate language, but reflected severely upon the government for all the injustice I had lately suffered. I also wrote to Messrs. Hume and Roebuck, and in a communication to the Reverend Mr. Carver, who had requested me to write to him occasionally, I inconsiderately took the liberty to animadvert in strong terms upon British justice.—This letter, after being inspected by the captain, was sent *unsealed*, first, to the great “powers that be,” in London, and by them forwarded to my friend, who was greatly alarmed lest the government should suspect him of similar sentiments, and wrote me a severe reprimand, which he also sent

unsealed through the same channel. I did not blame him for this, for I knew, that although he was one of my warmest friends, he was as jealous of his character for loyalty to his sovereign, as I was of my own for the cause of Canadian liberty. But kindness of heart was visible in every sentence of his singular epistle; at the close of which he annexed testimonials of character for myself and friend, to be used if we thought proper in the land of our exile.*

At the end of two weeks, the captain, whose hauteur toward me had been daily wearing away, said in an under tone, when my name was called at the muster for labor, "I shall send you and Grant out to Chelsea beach to work in the invalid gang, where your labor will be light." I made him no reply, although in truth glad of the change, for I was quite unable to perform our heavy tasks in the dock-yard.— "Thank you, sir," was upon my lips, but I recollected the injustice which I had suffered in being compelled to labor with the English felons, and was silent. There were about seventy invalids in the gang—lame, blind, halt and lazy; and among the latter I soon learned to class myself. The beach where

*This is to certify to all whom it may concern, that from a long and intimate acquaintance with Mr. Linus Wilson Miller, during the period of his detention as a state prisoner in the prison of Newgate, London; and from daily observation of his character and disposition, I consider it only an act of justice to state that I conscientiously believe him to be a young man of excellent abilities, extensive attainments, strictest honor and integrity, sober and industrious habits, and actuated by a high sense of religious and moral responsibility, founded upon a solid and extensive acquaintance with the doctrines and precepts of the inspired volume; and moreover I can heartily recommend him as well qualified to fill any situation where trust, confidence and good abilities are essential requirements. He has studied as an American barrister.

JAMES CARVER, M. A., Corp. Chris. Coll., Cambridge.

September 3, 1839.

Chaplain of Newgate Prison, London.

This is to certify that I have been intimately acquainted with Mr. Grant, for many months detained as a state prisoner in the jail of Newgate and now about to be banished to Van Dieman's Land. After a close and daily observation of his principles, disposition and habits for so long a period, it affords me very great satisfaction in being able to bear my testimony to his character as a very upright, honest, sober, amiable, industrious, and, above all, religious young man. Any person requiring an active, intelligent and trustworthy assistant, in almost any branch of business, will find in Mr. Grant an invaluable coadjutor.

JAMES CARVER, M. A., Corp. Chris. Coll., Cambridge.

September 3, 1839.

Chaplain of Newgate Prison, London.

we worked was about one mile from the hulk, and the employment consisted chiefly in wheeling earth, in barrows, a distance of eighty yards, to form an embankment; but every high tide washed away the fruits of our labors. I was not a little amused at the manner of working practised by the invalids, who being exempt from hard labor by the surgeon, are only required to work for exercise. In the first place the barrows were filled, *not too heavily*, by some stiff-backed fellow who appeared to know nothing about stooping. The *knight of the barrow* would then wheel it about twenty paces, set it down and rest a few minutes; then start afresh, going the same distance at a *snail's pace*. In the course of half an hour the cargo of earth would reach its destination, and the fellow might be seen resting on his way back with the empty barrow. He who could do the least work without standing absolutely motionless during the whole day, was esteemed the best fellow; and the beauty of the system was, that all went on harmoniously, overseer and men being too lazy to scold or quarrel. The sun was closely watched by all until he reached his meridian, when a cessation of all secular pursuits took place for a long hour. Eating, drinking and dozing were then performed with a right good will until the bell rang for labor, when Sol, in his downward course, again became an object of special interest.

The overseer informed me that his orders from the captain were to allow Grant and myself to work or not, at our own discretion; of which gracious permission we were not reluctant to avail ourselves. Six men were sent with a cart every morning (a sentry guarding them) about one mile, to draw a cask of water for use during the day; we made two of the number, and this was our task for the entire day. Conceiving the possibility of an escape into the country, where it was probable we should find friends to aid us, (for our cases had become universally known and commiserated,) we resolved to make an attempt to throw off the yoke of slavery, and resent the injustice which we had experienced. Flogging was the usual punishment for absconding, but we thought Captain Nicholson would hesitate before he used the

cat-o'-nine-tails to state prisoners, and rather hush the matter up than, by punishing us, make our disgraceful treatment public. I felt somewhat elated at the prospect of showing our enemies that we duly appreciated their kindness, and enjoyed the sweets of freedom from our galling bondage, if it were only for a few hours. I also enjoyed the anticipation of causing the tyrants a little trouble, and possibly mortification. Gemmell was made a confidant in the business, after being cautioned to beware of Beemer, and he entered into the plan with right good will. We made ourselves acquainted with the immediate vicinity of the surrounding country from a map supplied by him. The sentry who accompanied the water cart being careless in his movements, we proposed to knock him down at the spring, possess ourselves of his gun, and then send him back to the party with the remainder of his charge, making him the bearer of a letter to the captain, which I wrote for the purpose.* Gemmell, who at that time was expecting a free pardon, requested me to furnish him with a copy of this epistle to carry home with him, and I was foolish enough to do so.

* SIR,—Although no apology can be due to you for the step we are about taking, we deem it proper in justice to ourselves, to state the reasons which have induced us to attempt our emancipation from British thralldom.

No civilized government upon earth makes greater professions of justice than that of Great Britain. Humble and insignificant as we may appear in the estimation of that government, we have rights, which, notwithstanding the convict apparel upon our persons, galling chains upon our limbs, and the menial tasks which we are made to perform, we have never forfeited. From the period of our first imprisonment in Canada, those rights have been trampled upon and violated. Tried under a provincial act, evidently unconstitutional and repugnant to the laws of England,—nay, not tried, for the proceeding against us deserved not the name of a trial,—dragged through a thousand horrors to the shores of this “free and happy England,” it was natural for us to hope for some amelioration of our woes where the divinity of justice presided in person; but the experience of a few months has taught us that hopes founded upon so baseless a fabric must be vain and delusive.

The decisions of her Majesty’s Court of Queen’s Bench in our cases was evidently founded upon a predetermination to support the present administration of government.

The subsequent decision of the Court of Exchequer in the cases of our comrades, in the benefit of which investigation we, unfortunately, did not participate, could not, by any possible construction, lessen our claims to either a just or merciful consideration of our own cases from the government.

Compelled by the decision of the court to release the nine untried prisoners, the established hypocrisy of the British government was manifested in their patents of pardon, which stated that the royal clemency was extended to them in consideration of their having already suffered sufficiently for their crimes.

It was well known to the government that some of them were active agents in getting up the rebellion, and in this respect far more guilty than either of us, while our sufferings had

About half an hour before the time set for the execution of our project, the captain came off in his boat, apparently in great trepidation, and ordered us to return with him to the hulk. Suspecting from his grave demeanor that all was not right, I took the letter from my pocket and commenced tearing it into small slips, which I threw into the water. The captain ordered the boatmen to cease rowing, and came forward to the bow where we sat, with the intention of seizing it; but crushing it in my hand, I held it under water, upon which he re-seated himself, and closely watched me while tore it into fragments. Arriving at the hulk, the first object which I saw was Beemer, whose countenance wore a malicious grin, which I well understood. Gemmell stood leaning against the side of the ship pale as marble, as was always the case when he had committed some egregious blunder. I learned from him that in the unbounded joy of his heart, at the prospect of our escape, and supposing that we were already beyond the reach of treachery, he had made a confident of Beemer, who snatched the before-mentioned copy

been greater and more severe than theirs, notwithstanding which we were denied the same boon,—because, forsooth, there was no compulsion as in their cases,—our respectful petitions rejected and our friends insulted for daring to ask for even justice in our behalf.

The discharge of our comrades was the signal for the imposition of new and aggravated severities upon us. We were immediately removed to this place in company with the worst of felons, and as though no longer entitled to the treatment of state prisoners, were herded with the offscourings of England, and indeed of the earth, compelled to conform to the same degrading rules and perform the same servile labor, a slavery far worse than has ever fallen to the lot of the Negro race in any age or part of the earth in consequence of the contaminating influences of the most revolting vices.

Whether, sir, the government have sanctioned the severity which you have imposed upon us, is a question for you to answer, and it makes no difference with us, who have been the sufferers. It is not unknown to us, however, that you received positive orders from her Majesty's Secretary of State to treat the Canadian prisoners lately under your charge (Messrs. Wait and others) as state prisoners. Have those orders been countermanded, and the government made you the instrument of visiting upon our devoted heads punishment sufficient to satisfy them for their royal mercy to our pardoned comrades?

In conclusion, we have only to say that we detest the tyranny we have endured, and the authors of it, and hope our present effort to gain our liberty will, whether successful or not, serve to convince our enemies that we have at least the courage to resent our injuries.—The sentry who guards the water cart to the spring, will be the bearer of this letter to you, and as we intend taking his gun, &c., for our own use, we beg to recommend him to you for another gun and kit.

We have the honor to be, sir, your obedient servants,

L. W. MILLER,

JOHN GRANT,

State prisoners from Canada.

Lieut. NICHOLSON, R. N., Commander of York Hulk, Portsmouth.

of our letter and ran with it to the captain. Deeply mortified as I was, I could but forgive Gemmell his indiscretion, for I was certain he meant no evil. I had known him a long time as an honest-hearted young man, and to this day entertain great respect for him on account of his ardent attachment to the cause of Canadian liberty. As for Beemer, what else could have been expected from such a renegade? In the afternoon I was summoned into the cabin, where I found the captain and his chief mate, and the following dialogue took place between the former and myself.

“Do you know that hand-writing?”—handing me at the same time the paper which Beemer had given him.

“Yes, sir; it is my own,” I answered without hesitation.

“Indeed! then you acknowledge having written it?”

“Certainly. I never write any thing which I am ashamed to own. That, sir, is a copy of the letter which you saw me tearing up in your boat. You are indebted to Jacob Beemer for it, I am told.”

“No matter how it came in my possession; but were you really so foolish as to think of an escape? It is utterly impossible for any prisoner here to get away;” and he talked half an hour to convince me that such was the case, which only served to satisfy me that he feared we might have been successful.

I replied, “there could be no harm in trying.”

“Why did you wish to abscond?”

“That is a strange question to ask a captive; but the letter should have taught you our reasons.”

“I have done wrong, and am not ashamed to confess it to you. You doubtless recollect that you were exceedingly impertinent to me on your first arrival here. I formed a very unfavorable opinion of yourself and friend, Mr. Grant, in consequence, and resolved to be severe with you. My orders were to treat you as state prisoners, and I have regretted ever since taking the first step, that I did not follow them. I have watched you closely the whole time, and have not, since the first day we met, been able to detect a single fault in your conduct. Your overseers have told me

that yourself and friend were by far the most industrious and best behaved men ever under their charge, and I have been very sorry for my conduct toward you. The complaints which you wrote to the government, I took the liberty to suppress, and it is not known in London that you have been required to labor, as I have done it entirely upon my own responsibility. Henceforth I shall endeavor to make amends for the past. Your crime is not of a nature to degrade you, and in my opinion deserves no punishment. Be assured you have my deepest sympathies, and in future regard me as a friend, for such you will ever find me while your conduct remains good. While you remain under my charge, let me never again see you put your hand to labor of any kind.—I want no person to labor on my ship, who has committed no crime. I have given orders that you have the full liberty of the ship, and be exempt from the rules for the guidance of the felons.”

I thanked him, and acknowledged at the same time my impropriety of conduct on the day of my arrival, for which I had been not only sorry, but ashamed ever since, but had borne much at that time to tire my patience.

Grant was then called, and dealt with in a similar manner; after which our heavy irons were knocked off, and I will add, that the events of the day, although entirely different from what we anticipated in the morning, removed a heavy load from my heart; as it now appeared our late treatment was not intended by the government, and I indulged the hope that upon our arrival in Van Dieman's Land the same rules would be observed.

During the remainder of our stay at the hulk, Capt. N. was all that he had promised, *a true friend*. He could not have treated us better. As for the traitor, Beemer, he was scouted from one end of the ship to the other. Not one of the officers would speak to him, and even the convicts shunned him as a greater scoundrel than themselves. They called him “the man who *comes it* on his mates.”

The rations of the prisoners consisted of oat-meal for breakfast and supper, with four ounces of ship biscuit. For

dinner a pint of soup, (so called, although it was little better than warm water,) a half pound of salt beef, generally all bone, and a pound of a coarse, black substance, which the officers called bread, and the prisoners, "brown tommy." I do not exaggerate, when I assert that swine, in my own country, would not eat it unless half starved. What it was made of I never took the trouble to inquire, as eating it was out of the question. Every third day dinner consisted of this bread, half a pint of sour ale and two ounces of unpalatable cheese. The prisoners generally complained of hunger after their meals. Many were greatly emaciated from this cause. I suffered much myself from a craving appetite, which was not once satisfied while there.

In the winter season the clothing and bedding allowed is but just enough to keep the poor suffering wretches from freezing. The wards are cold and damp, no fire being allowed. In order that it may not be said that "slaves breathe in England," twopence per day is allowed each man who labors in the dock-yard, one half of which he draws at the end of the week in "white bread," and the other penny is put by for him to receive at the end of his sentence. The last, however, he seldom gets. The invalids who work at Chelsea beach get nothing but the salt in their *shilly*, which they scarcely earn. Once a year the friends of the prisoners are allowed to see them, and every six months an interchange of letters (which always pass through the captain's hands) may take place. Many prisoners whose sentences are seven and ten years, are never sent from the country, but serve the whole time at the hulks. When their conduct has been good, a year and sometimes more, is forgiven; but there are few who can claim this indulgence. Those sentenced for a longer period are invariably sent to Van Dieman's Land. Boys aged from seven to twelve years are sent here, and to the penitentiary on the Isle of Wight. Several hundred are yearly sentenced to transportation for seven, ten and fourteen years. They are mostly educated in crime by their *parents*, who teach them to pick pockets, &c. How far such lads should be accountable to the laws, is a question which I will not pretend to answer;

but of this I am certain, their condition is rendered hopeless by being transported. If they are not perfect masters of the *devil's art* before, they become so in a few months' time after being sent to the hulks. Although the rules of these floating prisons are exceedingly rigid and severe, every thing which can be called an indulgence being prohibited on pain of solitary confinement in the cells or a flogging, traffic in money, tobacco, knives, &c., is constantly carried on, and means are found to evade the penalty. Happy would it be for the poor convict if the foregoing description embraced the worst features of the hulk system. I pause upon the threshold of its dark and disgusting realities, and ask myself the question, what good will be secured by going farther? But the spirits of the damned who have here filled up the measure of human iniquity beckon me onward, crying, "Spare not the TRUTH!" and the hope that its horrors when known, will save my own country from ever adopting such a system, would nerve my hand, if palsied, to trace it if possible in characters of living light and eternal durability upon the margin of the heavens, that not only Americans, but Englishmen, might read it and BEWARE! From the moment the poor convict sets his foot upon the English hulk till he leaves it, suffering, privation, insult, reproach and shame become his meat and his drink, and are stamped upon his gloomy brow; no voice of kindness ever greets his ear, no christian points him to hope in this world, or pardon and bliss in the next; but curses, imprecations and obscenity from his wretched companions pour in upon his soul, until every holy feeling is deadened and a living hell burns within his breast. Vice and crime of the most revolting nature, such as called down the vengeance of heaven upon ancient Sodom and Gomorrah, are prevalent to an alarming extent, and indeed every influence to which he is subjected drags him downward with fearful and rapid strides to the chambers of eternal death. Such fearful results are the natural results of herding depraved men together under such a system—a system which insures not only their entire ruin in this world, but, what is of far more importance, in that which is to come.

There was indeed a chapel in that sink of infamy, and a salaried clergyman of the Church of England, during the time I was there, preached Sunday mornings, and as I understood performed the evening service at the Leviathan hulk which lay moored in the harbor; but we never saw him during the week or heard him speak except from the pulpit.—His sermons were very dry and uninteresting, and a word of kindness or encouragement to the poor fallen men under him was never heard from his lips. His whole conduct proved that he felt no interest whatever in the spiritual welfare of his charge. I became acquainted with a few who, upon their first arrival at the hulk, evinced a desire to abandon sin and seek the consolations of religion as the only source of happiness left to them in this world; but there was no one to take them by the hand and point to a bleeding Savior; no one to encourage their good resolutions; no one to tell them that the Redeemer of mankind came to seek and save the lost and ruined of earth, and they soon returned to sin and folly.

The lower deck was used as a hospital for the sick, and had accommodations for about one hundred patients. During the sickly season it is often full, and but too frequently vacancies occur to replenish the *dead-house*. A coroner's inquest was always called, when this loathsome receptacle became crowded. The jury from Portsmouth, would merely look at the corpse and return a verdict according to the report of the surgeon, who was the only witness questioned. I have no hesitation in giving it as my opinion, that cases frequently occur where the surgeon ought to be indicted for mal-practice or culpable neglect; but then, who cares for the life of a convict? The relatives of the deceased are generally at a distance, and the government are interested in getting as many of the poor wretches off their hands as they conveniently can. The jurymen are generally such persons as are incapable of detecting foul play if the evidences of it were ever so plain, and what is worse, care not whether a convict is murdered or dies by the visitation of God. The dead after having been dissected, were nailed up in a rough box and thrown into a pit on shore without ceremony. Such was the melancholy

end of the convict! When any poor wretch lay at the point of death, the clergyman before mentioned was sent for, who would go to the couch of the dying man, take his prayer book from his pocket and hastily read the service appointed for the occasion, and generally without saying another word, turn coldly away, jump into his boat and return to the shore, to enjoy his ease and comfortable salary. No wonder that the poor convicts, with but few exceptions, expired uttering oaths and imprecations. Fearful must be the state of that *surpliced gentleman* at the last great day! The convict whom he despises will rise up in judgment to condemn him.

I sat by the couch and witnessed the last moments of a poor fellow, who died apparently more from a broken heart than any deadly malady. Oaths and curses were as usual the most familiar sounds in that chamber of death, but the dying man heeded them not; his thoughts were upon subjects dear to him in that solitary and all-important hour.—The home of his childhood, his widowed mother, a sister, and a dear friend whom he called “Sarah,” were ever and anon upon his lips. The days of his innocency and happiness came back in all the freshness of awakened memory, and as he lisped the names of those he loved, and who, perchance, still loved him, notwithstanding his errors, his dim eye kindled with the lustre of other days, and his blanched cheek gathered a momentary freshness, evincing that lost and ruined as he was, the heart’s best affections had lived to the last, while honor, virtue, and all else that was good, had sunk long years before in the dark sea of crime. He inquired of me if Jesus died to save convicts? I replied that he was crucified between two convicts, and read to him the promise made to the penitent thief when just upon the threshold of eternity. He entreated me to hold the Bible before his eyes, that he might read the words himself. I complied, and when he had finished, he closed his eyes and lay silent for a few minutes, but his lips were moving while the cold sweat of death stood in large drops upon his forehead. Opening his eyes he whispered, (for he was nearly gone,) “Oh that my poor mother was here. She has pray-

ed for her wicked son a long, long time, and now I believe her prayers are answered, for I feel, I feel that I am not afraid to die. I don't feel that great load of sin now—it's all gone; and, somehow, it looks bright and pleasant yonder (looking upward as if the gate of heaven were visible.)—Oh! that I could live a little longer. It seems as if I could persuade all the prisoners here to forsake sin and love God. I am happy!—how sweet death is—how dreadful sin looks—how merciful Jesus is! Oh, mother! dear mother, we shall meet there!—till then fare—.” The word remained unfinished; for the crushed and broken spirit of the convict, the doomed, the lost, the degraded outcast of earth, shook off its earthly chains, and it is to be hoped stood regenerated, free and blessed, in the presence of the Eternal One. How many favored sons of fortune, who despise their fallen brethren, pass from the scenes of earthly grandeur, and the enjoyment of earth's richest blessings, without one ray of that cheering light which shone upon the convict's soul to illumine the shades of death! But seldom, indeed, does it happen that the last moments of the convict are otherwise than most horrible and wretched. Oaths and blasphemy, too frightful too be heard, are, in nineteen cases in twenty at least, the last sounds which proceed from his lips. This is a natural consequence of the wretched hulk system. The responsibility resting upon the British government in this respect is fearful. Although a member of society may, by crime, forfeit his privileges as such, and possibly his natural right to even life itself, but what offense against the laws of either man or God can confer the right upon government to destroy the soul as well as body, and shut the gates of heaven, as well as the doors of earth against him? Several thousand men, boys and females are yearly doomed to drag out existence either in Van Dieman's Land, the hulks, or places of punishment conducted upon similar principles. It is, however, a cause for much rejoicing with philanthropists, that the attention of the government has of late been directed to this important subject, and highly satisfactory experi-

made at Pentonville, England, upon the *silent system* of the United States, with a view to adopting it altogether.

A convict, or "bay ship," as the prisoners designated her, made her appearance at Spithead about the middle of September, and expectation was on tiptoe with regard to who were likely to become a part of her cargo. Two hundred and forty men, amongst whom were Grant, Gemmell, Beemer and myself, were drafted from the York and Leviathan hulks for the voyage. A suit of new clothes, including a pair of irons, was served to each man; and the privilege of writing to friends was granted. Many of the men were anxious to be sent; preferring to endure the inconveniences of the voyage and the terrors of a penal colony to remaining at the hulks. Indeed, I believe many poor people who are unable to emigrate, commit crime on purpose to be transported to the Australian colonies, thinking it better to live there as convicts for a few years, than to endure the privations of home. But they must be madmen or fools to do so.

When we left the hulk, Captain Nicholson called me into his cabin and a tear trickled down his cheek as he grasped my hand and bade me farewell. "You are going," he said, "to a distant country, where the hearts of men are steeled against prisoners, and your fate will, I greatly fear, be one of suffering and misery. The consciousness of undeserved punishment will doubtless enable you to bear the worst, and the day of deliverance will come, sooner or later. Doubtless the same orders will be sent with you as I have myself received, with reference to your treatment; but at the very best your condition will be bad. Trust in Heaven!"

We were conveyed in launches to the "Canton," a vessel of about three hundred tons, lying at Spithead. On our way we passed over the spot where the "Royal George" found her grave. Attempts had recently been made, and with partial success, to raise her timbers, by means of gunpowder and the galvanic battery.

We were received on board the Canton with about as much ceremony as would have been shown to as many swine. A caution was given us with regard to proper conduct, &c.,

after which we were *turned* below to make ourselves at home in our new prison, and as the vessel did not sail for some days, we had leisure to familiarize ourselves with its horrors.

While the vessel lay at Spithead, I received letters from the Rev. Dr. Thomson, of Coldstream, Scotland,* Honorable Joseph Hume,† Thomas Falconer, Esq., and Mr. John Childs, of Bungay, expressing the deepest sympathy for myself and captive friends.

*The Reverend Doctor wrote as follows:

COLDSTREAM, September 16, 1839.

MY DEAR SIR,—I duly received all the letters you addressed to me since I last saw you in Newgate, but understanding that you would leave the country in a few days, I declined writing because I saw very little probability of any letter from this reaching you before you sailed.

I have not, however, been unmindful about your lamentable situation. Believing it to be one of the most distressing cases I ever heard of, I was very anxious after the release of your fellow prisoners, to ascertain whether something might not still be done to secure a free pardon for you and Mr. Grant also. I had for some time a glimmering hope, from what Mr. Childs had written to me on the subject, but a recent communication from that gentleman has led me most reluctantly to the conviction that any such hope must for the present be relinquished. The only thing I can think of now is to try to procure a pardon after you have reached the place of your present unhappy destination. But how that is to be effected I really do not know. It still strikes me that the publication of some of the papers in my possession, either with a dedication to the Queen or an urgent letter to the Colonial Secretary, might answer a good purpose. It might excite a deep interest in your favor among pious and compassionate people, and lead them to exert themselves to obtain your release; or at any rate to secure for you the most comfortable treatment in the land of your banishment. Were I to publish anything with this view, I should like, provided you receive this in time before leaving England, that you would write a narrative of your life, (with some account of your family, &c.) from your birth up to the present day. Now do this immediately; if it is to be done, and enclose the packet under cover to Mr. Hume. My heart really bleeds for you. I would wish to do everything possible to have you restored to your family and to liberty. I still cling to the hope that the many and earnest prayers presented in your behalf, by your parents, sisters and others will be heard and answered in the way they wish. I am sure they will be answered in the best way. Remember me with much sympathy to Mr. Grant. May God Almighty bless you both! May He comfort your hearts and ultimately "compass you about with songs of deliverance!"

I am yours affectionately,

ADAM THOMSON.

† The following extract from Mr. Hume's letter, dated at London, 17th September 1839, shows how much we suffered from "expectations removed" and "hope deferred," yet it was such slight and doubtful encouragement which saved us from despair:

Mr. Hume assures Mr. Miller that the case of himself and other Canadian prisoners shall not be forgotten; but at present the changes in the ministry and other matters prevent their case being known and attended to. There is in the Toronto newspapers received yesterday a report that *all* the prisoners in both the Canadas are to be discharged. Sir John Colborne leaves, and Mr. Poulett Thomson and others have gone out. Mr. Hume thinks that when Mr. Thomson, the new governor, arrives, something will be done.

CHAPTER XIX.

Regulations, &c., of the Convict Ship.—“Weighing Anchor.”—Apostrophe to Eng. land.—Sea-Sickness.—Profanity, &c., of the Prisoners.—Kindness of the Surgeon. The Prisoners' School.—A Calm in the Tropics.—Fighting among the Prisoners.—History of Henry Williams.—Sharks, Albatros, &c.—Tristan de Cunha.—Doubling the Cape of Good Hope.—Burial of the Dead at Sea.—Van Dieman's Land in Sight.

THE middle deck of the Canton, from the main hatchway forward, formed a floating prison for 240 men, during a voyage of two thirds the circumference of the globe. The accommodations were far better than we experienced on the “Captian Ross.” Two tiers of berths, large enough for five men each, were fitted up on either side, and thirty hammocks were slung at night in the intermediate space. The height between decks was six feet eight inches. Two large hatchways, always kept open, but secured with iron bars, ventilated the prison. The floor and berths were clean, and a proper regard to the health of the prisoners appeared to be scrupulously observed. For convenience in rationing, they were divided into twenty-four messes of ten men each. Eleven ounces of ship biscuit of an inferior quality, one half pound of salt meat, one pint of pea soup, or five ounces of flour made into a plain suet pudding, one pint of sweetened tea for breakfast, and the same quantity of cocoa for supper, were allowed each man daily. A small quantity of wine, or lime juice, was also served to each man, as a preventive to *scurvy*, a disease well known on convict ships, and indeed any vessel in which salt provisions are used during a long voyage. Vinegar was likewise allowed for the same purpose. Two men were selected as cooks for the voyage, which duty they performed satisfactorily to all who were not particular about

“the peck of dirt.” Twelve men were formed into a constabulary, whose duty it was to maintain order and report all irregularities to the surgeon, Dr. John Irvine, R. N., who visited the prison daily, and heard any complaints which the constables or men might make. The prisoners were under his exclusive charge, and the captain had no right to interfere, except in cases of emergency. He received from the government, as a compensation for his services, one guinea per man, for those only whom he landed at Hobart Town; thus making it his interest to treat them well. He was an Irish gentleman of mild deportment and christian principles, and had served professionally in the British navy, for twenty years. The safe custody of the prisoners was entrusted to Lieut. Colonel Hulme, of the 96th, with a guard of forty men.—Most of his regiment were already in Van Dieman’s Land, and this officer was going out with the detachment to join them.

On Sunday, September 22d, 1839, at half past ten o’clock, A. M., the boatswain *piped*, “All hands weigh anchor.” As the sailors manned the windlass and half chanted, half sung, the customary song, so touching and appropriate to the occasion, it seemed to me that the anchor of hope, which held my soul to earth, was being torn from the rock of faith, and confidence in God. Though the storm of adversity had beaten hard upon me and I had been tossed upon the billows of affliction, hitherto my strength had been equal to the emergency, and I had found something to which I could cling, and defy despair; but now, the dark picture of the future, which my imagination drew, presented no light shade, no friendly beacon, to encourage hope, and render existence tolerable.—The remainder of my days were, perhaps, all to be spent with the outcasts of earth, and friends, and home, and country, never to be enjoyed again, except through the kind offices of memory. There was but one source of comfort left, and I sought to avail myself of it. It was to trust in the prisoner’s God. I knew that He who “tempers the wind to the shorn lamb” would never leave nor forsake me, so long as I “cast my cares upon him.”

The view of Spithead was one of the finest which I ever beheld. In beating out of the channel, we twice passed near the lovely town of Ryde, on the Isle of Wight, long named, on account of its rich and delightful scenery, "the garden of England." It appeared to me a perfect paradise on earth, and I envied the poorest inhabitant, who dwelt amid such fairy scenes.

Adieu to thee, England, thou highly favored land! Many a lesson, valuable to me in after life, did I learn upon thy shores. Many a happy hour, in spite of bonds and prison walls, did I spend whilst thou held me a captive, and very many long and wretched days of agonizing misery thou didst also deign to bestow upon me. The bright and the dark picture of human life were thine to show me. Thy *favored few* have passed in gaudy array before me—the wail of thy oppressed and starving millions has sounded in my ear. Some of thy sons have held out to me—a captive stranger in a strange land—the right hand of friendship. They have softened the pains of imprisonment, and sweetened the cup of woe. They have disarmed my youthful mind of prejudice, and taught me to love Englishmen even as I love my own countrymen. But those exalted to be thy rulers, by injustice and oppression have taught me to hate and despise thy government. Adieu to thee, England! Live on in thy glory; clothe thyself in thy rich apparel while thou canst, for MENE, MENE, TEKEL, is written upon thy walls; thy days are numbered, and thy glory will ere long be laid low in the dust!—Generous, noble-hearted Britons! friends of the captive stranger, a kind adieu!

We were two days in making our way into the open sea. No sooner were the sails unfurled than sea-sickness commenced, and in a short time became general. There were only half a dozen persons in the prison who escaped the malady. "Accounts were cast up" without ceremony, not only on the floor but in the berths; and our apartment was rendered truly horrible. An entire week passed before it could be properly cleansed. Meanwhile the horrors of the convict ship began to be realized by myself and comrades. I speak not of ac-

commodation and treatment; both were as good as would have been expected, and far better than is usual on board vessels of that character; but to me the prison was a floating hell! The most horrid blasphemy and disgusting obscenity, from daylight in the morning till ten o'clock at night, were, without one moment's cessation, ringing in my ears. The general conversation of these wretched men, related to the crimes of which they professed to have been guilty, and he whose life had been most iniquitous was esteemed the best man. I tried to close my ears and shut my eyes against all, but found this a difficult task. With the assistance of books which were kindly loaned me by the surgeon, and by persevering in my efforts I finally triumphed and was enabled to shut out the dreadful sounds and live on in the midst of those horrors in an ideal world of my own.

Some kind friend in England having written to the surgeon in behalf of Grant, Gemmell and myself, every possible indulgence was granted us, which excited the ill-feelings of the English prisoners, who generally strove to annoy us as much as practicable, and this was not a little. Gemmell was appointed "surgeon's mate," and had charge of the hospital, (a room adjoining the prison, fitted up for that purpose,) where he was quite comfortable. Grant and myself had a berth fitted up exclusively for ourselves, in the centre of the prison and near the hatchway; the fresh air which we enjoyed in consequence rendered our condition far better than it could otherwise have been. We also had permission to go on deck when we chose, and the promenade of the forecastle, from which the other prisoners were excluded, was a privilege highly prized. As for Beemer, he was generally treated according to his deserts; but the fellow made himself busy during half the voyage in fruitless endeavors to deprive us of the surgeon's friendship. Another favor allowed us was that of drawing tea, sugar and flour in lieu of such rations as we could not eat, and cooking our own tea. An extra allowance of water was given for the purpose.

I did not recover from sea-sickness until the voyage was more than half completed, and, as I was unable during the

time to take much sustenance, I was reduced exceedingly low. The surgeon afterwards informed me that he had at the time, but slight hopes of my living to complete the voyage. When, however, I regained my health, my appetite ran to the opposite extreme, and if I failed to eat every thing within reach, it must have been owing to some deficiency in my teeth.

All hands were divested of irons soon after we sailed.— This is customary on board convict ships. Were it otherwise the clanking of chains would drown even the blasphemy of many voices.

A school was opened during a part of the day, and all were allowed to attend who chose. Slates, arithmetics and spelling-books were furnished, and several teachers appointed by the surgeon, who usually spent a short time in our apartment during school hours. I was dubbed "teacher;" but found the task of instructing *old* ideas "how to shoot" rather dull.— There was so much wickedness constantly going on that but little progress could be made in any thing good, and after a short time our number dwindled down to teachers only, all of whom knew too much to be instructed by the others, and so we had a vacation which lasted to the end of the voyage.

Favorable winds carried us quickly across the stormy Bay of Biscay, and we soon saw the peak of Teneriffe, at a distance of fifty miles, its head far above the clouds that intervened. As we approached the equator, a calm which lasted several days succeeded the north-east *trades*, and we had an opportunity of experiencing the almost insufferable heat, which never varies but slightly in that latitude. Although three pints of water were allowed each man to drink, they suffered extremely from thirst, and some of the poor fellows appeared to be more than half deranged in consequence. The health of the prisoners, owing, no doubt, to the habits of cleanliness which were strictly enforced, and the not unwholesome diet, was unusually good. There was at this time, but one prisoner in the hospital, and his complaint was of a pulmonary nature of long standing. Another cause for this general good health was, doubtless, the length of time

the men were kept on deck. In favorable weather, they were not allowed to spend more than one-fourth of the day below.

Although the quantity of wine allowed each man was small, its effects were always visible for a few succeeding hours. Loud talk, singing songs, spinning yarns, altercations, and fighting, were the order of the day the moment the wine was served out. I have often counted a dozen men settling their little quarrels at such times. A ring around the belligerent was always formed on these occasions by the "lookers-on," and seconds duly appointed to see *fair play*. The practice of fighting, among the lower classes of the English and Irish, is far more common than with my countrymen. Indeed, I do not recollect having seen but three or four instances of this disgraceful practice during my life in my own country. A systematic code of laws, for the guidance of the principals and seconds, was universally known and observed. Kicking, striking, or offering any injury to an antagonist when down, "gouging eyes," so common in the civilized state of Michigan, or anything of the sort, was never dreamed of among these scientific warriors. They invariably fought *from principle and according to law*.

There was one young man, among this herd of criminals, whose superior conduct and manners early interested me.—Henry Williams (an assumed name) never associated with the wicked men who surrounded him. He was gentle and mild in his manners, and his melancholy countenance was never seen to light up with a smile. Whatever of good or ill fell to his lot, he never murmured, but bore with truly christian meekness the frowns of adverse fortune. I sought his acquaintance, won his confidence, and he became to me a friend and companion. His history was a sad one. He was the only son of respectable and wealthy Irish parents, and had received a liberal education. While spending a few months at home, after the completion of his studies, he became attached to a peasant girl, whose parents were poor but honest. Without consulting his friends, who, he well knew, would object to the union, he married her clandestinely, and

then, upon his knees, confessed all and besought forgiveness. He was turned from his father's door with the curse of both his parents upon his head. With but slender means, he repaired to London with his bride, thinking to obtain some assistance from a rich uncle, but his hopes were cruelly disappointed. Friendless and a stranger, he sought employment for a long time in vain, but, when his last shilling was spent, he succeeded in obtaining a situation as book-keeper in a mercantile house, which afforded but poor support for himself and wife. In one year he became a father, but when his wages were most needed, the house failed and left him nothing but a character from his employer. With this he wandered through the streets in search of further employment, until his child died from want, and his wife was almost dying from the same cause. She had eaten nothing for three days but a crust of bread, and he had fasted double that length of time ; besides, the rent of his house was in arrears, and on the following day they were to be turned into the street. Passing a jeweller's shop that evening, for the first time in his life, he felt tempted to steal. He could have starved first, himself, but his poor wife must have food that night. He stepped into the shop, told the jeweller his sad story, and asked for the loan or gift of a shilling, to buy some bread, but was turned out of door. In a fit of frenzy he broke a pane of glass in the window, seized a chronometer and ran towards his wretched home.

"Stop thief!" immediately sounded in his ears, and in a few moments he was in custody of a policeman, who, to ascertain the truth of his statements went with him to his home. When his wife heard the horrid tale of his guilt and detection, she fell down and expired in his arms. He recollected nothing further, till he found himself in court, arraigned for trial. In reply to the usual question of "guilty or not guilty?" he answered, "*guilty*," and was sentenced to transportation for ten years. Such was this man's melancholy history. The curse of his parents seemed to follow him, for within a few months after his arrival at Van Dieman's Land he died in the lunatic asylum at New Norfolk.

While within the tropics, the sailors caught several sharks. They were taken with a large hook, baited with a piece of pork which weighed four pounds. The habits of this terror of the deep are too well known to be particularized, and I will only add, that I ate a morsel of one which the captors of the huge animal cooked. The flesh was coarse and not over pleasant, I should judge, to an epicure's taste. An albatros was taken about the same time. The noble bird was observed swimming in our ship's wake, one calm day, and apparently busy in picking up something eatable from the refuse thrown overboard. A hook, attached to a line, baited with a small strip of red flannel cloth, and buoyed with a cork, was thrown out to tempt its avaricious appetite. It took the bait at once, and was immediately hauled on board, during which process it struck one of the sailors a hard blow with its wing. The size and shape was not unlike that of the swan. The body was clothed with a thick down, of snowy whiteness; its neck long and graceful, head bald, bill long and slightly curved, eyes large, dark and piercing, tail, when spread, of a light, and wings of a dark brown, long and arching. It measured from tip to tip of the wings, fourteen feet seven inches. The sailors cooked it, and I ate the heart and liver, which tasted not unlike those of the wild duck of America. The albatros is the king of sea-birds. They may generally be seen at all times in the warmer latitudes, sweeping through the air in circuits of about one-fourth of a mile, and never strike the air with their wings, but rise and fall in their flight with the most systematic grace.

Mother Cary's chickens frequently made their appearance, but were not always followed by a tempest, as sailors believe. They are a small, dark-colored bird, quick in their motions, and only fly in high winds, which accounts for their being considered as precursors of sea-storms. A large number of sea-gulls, of different species, were always visible from the deck, and shoals of flying-fish were common.

Soon after sighting Trinidad, a barren, lofty rock, three-fourths of a mile in circumference, the Canton tacked and

stood toward the cape of Good Hope. The south-east trade winds render it necessary for ships to sail thus far west, in order to "double the cape." On the 10th of November we arrived at Tristan de Cunha, a small island lying about fifteen hundred miles west of Africa, and *hove to* during the day for the purpose of obtaining some fresh provisions. We were soon boarded by the governor, accompanied by several of his subjects, among whom I soon discovered a countryman; from him I learned some interesting particulars of his adopted island home. The population was only fifty-nine, and consisted chiefly of shipwrecked mariners, of every nation in Europe and the new world. They obtained a livelihood by agricultural pursuits, grazing, and trading with the vessels which frequently touched there. They had, at that time, nine hundred head of cattle, and three thousand sheep. Their social and political condition may be described as follows: A community of property, a written code of laws of their own making, and suited to their peculiar condition, the execution of which depended upon the will of their governor or chief. A due observance of social rights and duties among themselves, and honorable dealing with strangers with whom they traded, were the leading characteristics of this singular collection of men. Several were married and had small families. The chief, (who enjoyed that honor from being the first settler and oldest inhabitant) had an African wife and three daughters, two of whom were married, and my informant added with not a little pride, that he had the distinguished honor of being the *king's son-in-law*, and when the old man died should be his successor. They acknowledged allegiance to no government except their own, and their independence had been tacitly recognized by the vessels of every nation by whom they were visited. Hitherto, they had lived in peace and amity, and their laws had been, in general, strictly observed. I inquired of my countryman if he had no wish to return to the United States, but he promptly assured me that nothing could tempt him to abandon the island.

After obtaining a quantity of fresh beef we again made

sail, and in ten days doubled the cape, in doing which we experienced a terrible gale that lasted several days. The sea ran mountain high, and we ran before the wind under bare poles much of the time. We had favorable winds the remainder of the voyage, with the exception of a "*white squall*," which suddenly carried away the mizzen, main and foretop-gallant masts, but as fair weather succeeded, new spars were soon erected. The health of the prisoners continued good; only two deaths occurring during the voyage, one of which was the case of consumption before mentioned, and the other of apoplexy. They were both consigned to the watery deep, there to remain till the sea shall give up its dead. The burial service was read by the surgeon on each occasion; the captain, officers, soldiers, sailors, &c., being in attendance. The corpse was sewed up into a hammock, in one end of which two cannon balls were fastened to sink it beneath the surface; covered with the "Union Jack" and placed upon a wide board, one end of which extended over the side of the vessel. When the words, so touching and beautiful for the occasion, were pronounced, "we therefore commit his body to the deep," &c., &c., the board was raised, a plunge succeeded, and the slight ripple of the parted waves, as we sailed on, soon disappeared. This was the end of our companion!

On the 11th of January, 1840, we passed around the southern point of Van Dieman's Land, which, however, from a thick fog, was not visible; and I felt that I was nearing a new home of suffering and woe.

CHAPTER XX.

Reflections.—Land, &c.—Arrival.—The Inspection.—Melancholy News of the Death of Three Canadian Prisoners.—Alexander McLeod.—A Friend.—Going on Shore.—The Barracks.—A Quandary.—Timothy Greedy and his Pipe.—Buying a Pair of Knee-Breeches.—Sir John Franklin.—The Speeches.

READER, wouldst thou know aught of the land of Nod?—Hast thou any desire to be made acquainted with the sad consequences of crime? Hitherto, the veil has been but partially lifted, the fate of the English felon in “*free and happy England*” only, has been described. Wouldst thou learn farther? These notes embrace not merely the history of the sufferings of political prisoners in exile, but give an imperfect description of the crimes and woes of thy race; of beings descended from the same original as thyself, inheriting the same infirmities, subject to the same natural laws, possessing the same immortal part, and having an equal interest in that world where crimes, once pardoned, are remembered no more, who, through error or misfortune, are doomed to tread a thornier path than thou; their horizon of earthly hopes overcast by a dark cloud through which no cheering ray of light e’er finds its way to illumine their eternal night; their backs exposed to the stripes of ill fortune; their hearts crushed beneath a load of conscious guilt; and their spirits ground to the dust by legal oppression and brutal tyranny. Wilt thou look upon the dark picture of Van Dieman’s Land, and learn wisdom; open the door of thy heart to the promptings of pity and compassion, and breathe a prayer to our Heavenly Father, for a blessing upon the unfortunate; for the angel of mercy to descend on wings of love and bind up the broken hearted, heal the wounded

spirit, and speak peace to the captive; for the dew of heavenly grace to water the parched desert of human woe, and its fructifying influences to cause the wilderness and the solitary way to blossom as the rose? Then read these notes; they are written for such as thou, and thou mayst rise from their perusal a wiser and better being. But if thy ear is closed to the voice of mercy, if the soft whisperings of compassion find no response in thy heart, and thou despisest thy fallen fellow creature, as unworthy of a tear, close the book; read not its dark passages of human life, lest thou becomest a *misanthrope*.

Land! Land! Van Dieman's Land! How the word flies through the ship! What feelings of pleasure, or horror, thrill the breasts of the various inhabitants of our little floating world! The captain, the British officer, and the kind hearted surgeon pace the quarter deck with quick step, occasionally taking a look through the glass, and exchange glances of mutual satisfaction as the wind freshens on our starboard quarter. The soldiers and sailors, forgetting their usual jealousies, crowd together on the forecastle, and anxiously watch to catch a glimpse of their common mother earth, and talk of anticipated pleasures. But the poor prisoner, the convict, where is he? Does *he* strain his eyes to descry the cursed shores of Tasmania? Does *his* heart leap for joy as the iron-bound coast becomes visible? Great God! see the hopeless glance of his eye toward his future home! Home? Is it the happy home of his innocence and childhood? Does his near approach awaken those holy feelings which friends, and kindred, and happiness, and love, kindle in the virtuous breast? Oh, no! All that the heart could love and cherish is left behind—far away; and lost forever; and memory, cruel memory, still clings to those dear objects, and hope lingers on the visions of the past. But the future, its dark and cruel uncertainty, the years of hopeless misery and woe, shame, degradation and death, haunt his gloomy spirit, and he bitterly curses "*the land!*"—"the land!"

I gazed upon the scene of common interest with feelings which it would be difficult to describe. I had received

many assurances from friends, that, at the worst, I was only doomed to an honorable exile, and tried hard to persuade myself that such might be the case; in spite of which, mysterious forebodings of evil would arise when I whispered to myself, "all is well; the worst is past; the future dawns with good!" Vain hope!

Driven onward by the wind, each moment shortens the distance from land, until the eager eyes of the voyager may feast upon the prospect, now distinct as we near some high promontory, and again confused and varying from the irregular winding of the coast. Enough, however, can be distinguished to form some idea of the general features of the country. Barren hills and mountains are the most prominent objects. Thick forests of evergreen trees cover the surface of the lowlands. At last, the Derwent opens its wide mouth to receive our vessel which has so long sported upon the vast sea, and now, cultivated farms, and occasionally a pleasant villa, vary the scenery. Little gardens in the midst of the desert, smile through the dark forests. Finally, the metropolis of the island lies before us. The view possesses little interest beyond the corresponding associations to which it gives rise. The certainty that some thousands of our fellow creatures live and move within its precincts, gives the low, indifferent buildings, and dirty streets, a charm to awaken dormant thought and idle conjecture. The question naturally arises to the European stranger, what is the society which comprises this collection of thousands in this land of Nod? Does refinement reign in the higher circles? Is there a high state of moral feeling generally, or has crime perverted all who inhale its cursed atmosphere, undermining the foundation of virtuous principles? What is the moral, social, and political condition of the middle classes, and how are the poor, the suffering, and the prisoner treated?

At 7 o'clock, P. M., January 12, 1840, the Canton dropped her anchor in Hobart Town harbor, and thus ended a voyage of sixteen thousand miles in sixteen weeks.

On the following morning the work of initiation into the mysteries of a penal colony commenced. William Gunn,

Esq., principal superintendent of convicts, accompanied by several subordinates, all of whom affected *importance*, took possession of the cabin. Proclamation was made that every prisoner should instantly make his appearance at the cabin door when called, under penalty of "*severe punishment*." The men were summoned in alphabetical order, and in due time my own turn came. "Is your name Miller?" inquired the great personage who acted as door-keeper. "It is," I replied. "Say '*sir*,' when you address *me*." (The fellow was a ticket-of-leave convict.) I was about to step into the cabin, supposing that my immediate presence was required, but was seized by the collar and told to "*wait*." "When you go in, take off your cap, say *sir* when the clerks speak to you, and be sure and *kelp* Mr. Gunn. "That is my business; I do not require your advice," I replied. "Don't be too *rowdy*; you'll get tanned here." "Send in Miller," from within, put an end to further interference, and for the first time I entered the "*sanctum sanctorum*" of the Canton. Mr. Gunn, a very respectable looking man with but one arm, occupied the *uppermost* seat at the table, with an immense book before him in which he was writing "*remarks*." Three clerks were likewise employed in a similar manner. I waited several minutes while my predecessor was *finished off*, and then, after being cautioned to "answer promptly and truly," my own "inspection" began: "What is your name? Have you parents living? What are their names? How old are they? Where do they live? What is their religion? Do they know of your being here? Are they wealthy or poor? Have you brothers and sisters? How old are they? Are they married? Have they any children? What is your own age? Are you married? Where were you born? What is your trade? What your religion? What is your crime? What sentence? Can you read, write, and keep accounts?" Answers to these questions being duly chronicled, I was ordered to pull off my shoes and stockings, which being done, the "measuring rod" was applied. "Stand up straight, no skinking, no stretching." My height was declared to be "jest six feet." I was then

commanded to strip to the waist, and my person was closely scrutinized for any *marks* or *scars* by which I might be identified in case I became wicked and depraved enough to run away. After my head and face had been minutely described, "that will do," was pronounced in a condescending tone, and I was about to "make myself scarce," when Mr. Gunn said, "Did you know Wait and his comrades?" I replied in the affirmative. "McLeod, McNulty and Van Camp are, I am sorry to say, dead. They lived but a short time after landing. The others are in the interior and are well. They appear to be very good men. I hope you and your comrades will conduct yourselves as well." "May I ask what their treatment is here?" "Oh, they are on *loan* at present, I believe; but I can not answer questions,—you may go." "So this is a specimen of Van Dieman's Land," I said to myself, as the impertinent door-keeper half pushed me out of the cabin.

Three out of nine of my late comrades were *dead*! This was sad news indeed. Poor McLeod, too, was one of the number. Never have I known a more noble specimen of the human race than was Alexander McLeod. Comparatively faultless in person, mind and heart, he won the confidence of all his fellow prisoners; and in Canada, England and Van Dieman's Land, the sympathy of those who had him in charge. Mr. Wait, in his narrative, says, "He (the surgeon) inquired for poor McLeod, and on being informed of his removal to number fourteen (dead-house) he said, 'I feared it! I wish to heaven I could have saved him, but he came too late for our skill. I never saw as perfect a model of a man as his; and I am sorry to say that I candidly believe him to have fallen a victim to the barbarity of the surgeon of the ship, who ought to be placed in the same situation that a dozen of his men are already in, since landing.'" In speaking of his interment, the same author adds, "Five days afterwards, a body of prisoners who had come in the 'Marquis of Hastings' were sent to the hospital to bury the dead. They arrived, and found the body on a table in the ward cut in many pieces, with its entrails lying beside it. They

gathered the pieces together and put them in a coffin of rough boards, and behold, it was poor McLeod, whom they all knew and respected. The scene was revolting, but there was no alternative. They carried him away and laid him in a stranger's grave, without ceremony, or one mark to distinguish the spot from the thousands of felons' mounds around him."

John James McNulty and Garret Van Camp were both upright, well disposed men and esteemed by their comrades. They, too, escaped from British thralldom through the grave. The former, says Mr. W., died of consumption, but the latter from an injury received while *drawing a cart*. Was it not better to die even thus than to live a *slave*?

Four years after McLeod's death, having obtained permission to visit Hobart Town, I spent considerable time in fruitless endeavors to discover his resting place; the Canadian prisoners having in contemplation the erection of a grave-stone as a simple tribute to his worth. When compelled to to abandon all hope of finding the grave, I sat down and penned the following lines, which were published in the "Colonial Times," of Hobart Town. I introduce them here out of respect to the memory of the dead, and not as possessing literary merit:

I sought the grave of my friend,
Amid the slumb'ring dead;
In the yard where outcast men
Are doomed to lay their head.

Where the wrong'd and injured lie,
Neglected and forgot;
And the raven's mournful cry
Alone bewails their lot.

Where the felon finds at last
An end to sin and crime;
His weary pilgrimage pass'd,
And sorrow healed in Time.

Where the free and bond both sleep,
In earth's cold, dismal cell;
And the gaoler, Death, doth keep
And 'tend his pris'ners well.

I sought in vain the place
Where they had made his bed:
The sexton had left no trace
Of the forgotten dead!

Stranger! wouldst thou wish to hear
Why I thus sought that grave,
To mingle a comrade's tear
With ashes of the brave?

'T was to bid him sweetly rest,
Though in a foreign land;
And plant a rose on his breast,
Cull'd by a comrade's hand.

To erect an humble stone
In honor of the brave,
With this inscribed thereon:
" *This is a Patriot's grave.*"

On the third day a gentleman by the name of Morgan, a police magistrate, and editor of the "Tasmanian Weekly Review," came on board and inquired for me. A friend in England had written to him in behalf of myself and comrades, and he called to tender his services. He had been an officer in the British army during the last war, and had since made a tour through the United States. He talked much of our institutions, American enterprise, &c., which he greatly admired; but was very bitter upon the subject of southern slavery. He acknowledged that in espousing the cause of the Canadians, I had only copied the example of Englishmen, who were proverbial for meddling with the politics of their neighbors. It was natural for the Yankees to wish to "*extend the area of freedom*," and annex Canada as a free state. He promised to use his influence with the colonial government to have us set at liberty in the colony, and said it would reflect eternal disgrace upon his country if any attempt was made to treat us as felons. I afterwards saw two of his papers, which contained an urgent appeal to the lieutenant governor to treat us with that liberality which the nature of our offenses demanded. "Our crime was a sterling virtue in the estimation of nine-tenths of the civilized world, and no attempt should be made to degrade or

punish us by unnecessary severity. Such a course would create a sympathy in our behalf, and render the government which oppressed us contemptible in the eyes of the world," &c.

If thou hast ever made a long voyage, reader, I need not tell thee how pleasant the sight of thy mother Earth is at its termination; and how thy feet itch to kiss her fair cheek once more. How dull and irksome thy old friend, the ship, becomes when forests, fields, meadows, and flowery gardens, are beckoning thee to come and taste their sweetness! Although hope of liberty on land was daily becoming more faint, I felt anxious to tread upon *terra firma*, to learn the worst, and meet the fate that awaited me as became a man. Any thing for a change, and to get rid of the dull monotony of a ship.

On the morning of the 17th January, the cry of "Rouse out there! turn out! turn out! going ashore! huzza for the shore!" resounded through the ship long before gray morning dawned in the east. It is natural for a *proud* young man to be rather fastidious in performing the duties of his toilet upon all important occasions, and as "going ashore" was a great event, I was very naturally thrown into a little flurry about dressing. A solitary lamp was suspended near the hatchway, but only cast a few glimmerings of that which I so much needed into my eyes, making it necessary to trust entirely to the sense of touch as there was no time to lose. In the hurry of the moment I committed a trifling blunder by putting on my — what shall I call them? — nay do not blush, fair reader, if I tell the truth without mincing; it was my knee-breeches—first in an inverted order; then the wrong side before; and lastly, rendered desperate by the cry of, "turn out there! launch alongside!—what are you doing there below?" I made a vigorous shove with my foot, which—oh, horrible to tell!—carried away at least one-half of—of—the *seat*! "Curse the breeches!" said I, "what a pretty figure I shall cut on shore now!" Nay thou wouldst not have laughed at my expense, reader, hadst thou been present, for it was all done in the dark, and even now thou

wouldst never have known this important incident in a prisoner's life, but for my perfect good nature in relating it. I have a piece of advice to append, for which I expect many thanks. It is, never to do any thing in a hurry in the dark. Take time to feel thy way, and in getting out of bed at night mind where thou putttest thy foot; serious mishaps may always be avoided by taking time to feel. Again, if thou art in mental darkness and canst not clearly see thy way, be not hasty; take time; thou wilt soon get more light; make further inquiry—research; nor take a single step until certain of being *right*. It will save thee thy reputation, thy money, thy friends, thy own self respect. How easy it is to do one's self or friend an irreparable injury merely by acting with haste in the dark! If we wait to hear but one side of a story, and that too misrepresented; if we take but one view of an important subject, and that perchance a false one; or if we shut out our eyes to the light which a little trouble and patience would bring to our aid, we may justly expect that darkness will blight our fairest prospects and finally annihilate our fondest hopes.

But the launch is ready, and now “tumble up! tumble up there! huzza for the shore! huzza! huzza!” What a rush to the gangway! what crowding and jamming, pushing and pulling, cursing and blaspheming among the poor wretches! Little do they realize what the shore will prove to them, or they would be less hasty. Grant, Gemmell and myself are soon seated by ourselves in the boat and have taken leave of the Canton forever. I felt for one, that I was parting from an old and tried friend, which had served me faithfully in the tempest and storm; nevertheless, I was glad to part company, for her friendship would no longer avail me. Alas! thus it is with the world; a tried friend is *cut* when no longer required to serve a purpose. A few moments brought us to the shore, and when I once more set my foot on land there was a sensation attending it delightful in the extreme, known only to those who have been long at sea. The whole party were marshaled in marching order, myself and comrades bringing up the rear. Constables were in attendance

to see that all was right, and we were ordered to "*move on.*" It was still dark, and so—so—but I will say nothing about it, as I do not know what *might* have been seen by any sharp-sighted, malicious person behind me.

The penitentiary, "*Teuch,*" or prisoners' barracks, into the yard of which we were turned, like so many cattle, to spend the entire day, covered an area of about two acres. (including the aforesaid yard). At one end of the yard was a large church, the basement story of which was converted into cells; on the front side the superintendent's and clerk's offices, and a large hospital; on the opposite the superintendent's dwelling house; and on the other end a large block of buildings containing a store-house, cook and bake-house, mess-room, tread-mill—of which more anon—and barracks, capable of holding about fifteen hundred men. The whole was inclosed by a high wall, the top of which was covered with sharp bits of broken glass, which would deter any person not made of mahogany from attempts to escalate it. The mess-room is a hall about one hundred feet in length, and sixty in breadth, containing fixed tables, forms, &c., in which the old hands dine. Attached to this is the cook-house, which, to the generality of prisoners is the most interesting part of the barracks, from the savory smell of sundry *nice things*, that, notwithstanding the rules of the place forbid it, are there to tempt the odd shillings and half-pence of convict epicures. Constables were stationed at the barrack gate day and night to see that nothing contraband passed in or out; but as the fellows were fond of "*tip,*" trade of all kinds went on briskly. This "*tip,*" it was said, was taken by every government officer in the colony, from the governor down to scavenger, and was what, in civilized countries, is called bribery. Our luggage was ordered to be taken from us, after being marked with our names, and put into the store-house under charge of a Mr. Williams, who was appointed to that office by the home government, with a salary of fifteen hundred dollars per year. We were told that every thing would be properly taken care of and restored when we were entitled to indulgence. But few of the boxes, trunks, &c., thus con-

signed to the safe keeping of Mr. Williams, ever find their rightful owners again. My own did not, and I heard many complaints upon the subject from others. At half past four o'clock in the morning the bell rang for "*turn out*," and there was a terrible rattling of nuisance-tubs, kids, pannakins, &c., until the breakfast hour was over. We were, 238 in number, penned up in one corner of the yard, and two constables placed over us to see that we had no communication with the old hands, who came out in small squads to look at us; many, no doubt, expecting to recognize old friends, companions in crime, whom they had left behind. Several recognitions of this nature took place during the morning. At six o'clock the muster bell rang, and about twelve hundred men answered to their names, took their places in their respective gangs, and under the charge of overseers marched out of the barracks to their daily labor.

Reader, didst thou ever in thy life come in contact with a very great man? If not, thou art "*nobody*," and it will be of little use for me to attempt enlightening thee, for thou canst not possibly comprehend the length, breadth, depth and height of the great, high and mighty Franklin—Capt. John Franklin, R. N.—Sir John Franklin, K. T., Lieutenant Governor of the island of Van Dieman's Land and its dependencies. Commander in Chief of her Majesty's forces therein, &c., &c., &c. Only think that I, thy humble servant, who as a matter of course could not have seen during the twenty-two years of my blissful existence, any body of more importance than a country squire, parson, or village pettifogger, should, by a single stroke of fortune, be thrown into the presence and society of this *great man*! Truly, I was born to behold wonders!

We were officially informed that his Excellency, the great man of the island, would call upon us, the day we landed, and were ordered to *clean* ourselves, and look as respectable as possible. We were also forbidden to appear in any other than convict clothing on the occasion. This last order placed me in a quandary, if I was not already in one; for I had sat upon a *cold stone* all the morning, for the sole pur-

pose of hiding the enormous rent in my knee-breeches. So long as I kept my uncomfortable position, all would be well, but I could not sit there forever. I had good clothing in my trunk, but it was of no use, for although I had worn it during the whole voyage, and given or thrown away my "government slops," with the exception of the rent breeches, now I was obliged to divest myself of every article and provide a substitute in genuine convict apparel. Had I been the owner of a single shilling, there would have been little difficulty in obtaining a pair of breeches, but, as it was, I could think of no better plan to make a "raise" than selling my dinners for a week in advance. Reader, wast thou ever hungry? I was half starved when I resolved to part (excepting morning and evening's skilly) with a whole week's rations for a paltry pair of *old knee-breeches*! "Holloa! there," cried I, to Timothy Greedy, a fellow who was always either purchasing, begging or stealing something wherewithal to glut himself; "Holloa! Tim, I want your services; have the goodness to step this way a moment." "What in the — do you want?" muttered the glutton, who was at that moment driving a bargain with a poor fellow for his evening's skilly. Tim was smoking his pipe, and it appeared that his victim was also a smoker, and desirous of gratifying his love of tobacco at the expense of his supper—"I tell you what," said Tim Greedy, "I will give you ten draws from this ere pipe I have smoking" (here he gave a puff of the delicious effluvia into the man's face, in order to make him eager for the bargain) "for your skilly to night, and will hold the pipe to your mouth and count while you puff them off; and if you wont do that, then be d—— to you for a stingy crab what's so d—— tight as wouldn't give your own shipmate vot let you smoke, a paltry dish of skilly." "I'll do it for twelve," was the reply. "To h—— with you; I'll see you d—— first." "Its a bargain, then," cried the other, and he eagerly held out his hand for the pipe. "Not so fast," said Tim; "the draws mustn't be too long; jest common puffs." "Agreed," said the other. Tim Greedy holds the pipe while the other smokes away his supper. "One," says Tim,

“two—three—four,—that’s a little too long,—five—six—seven,—too long again,—eight—nine—ten; that’s too d—— long; let go the pipe you d—— hog; you are swallowing the smoke you villain; you are getting three puffs for one.” The pipe was now reluctantly yielded, but the smoke continued to ooze out of the poor fellow’s mouth and nostrils for some time, clearly indicating that the last “draw” had been a good one. “Remember the skilly,” said Timothy Greedy, as he turned away and approached me. His greedy eyes were rolling in their deep sockets, and he looked hungry. I inwardly shuddered, and for a moment hesitated whether I should make my business known to him, but a very painful sensation, closely connected with the stone upon which I sat, overcame all thoughts of hunger, and I forthwith commenced making a bargain. “Tim,” said I, you have a pair of breeches that you do not wear. I think they will fit me, and if you are willing to part with them I will satisfy you.” “What will you give?” “I have nothing but my rations,” I replied. “You just now bought a man’s supper; what say you to a good dinner?” “Good dinner! do you think I will part with them are super-hexcellent knee-breeches for less than a dozen dinners?” “Tim,” I replied, “I want them, and will give you my dinner for a week, but no more. If you like the offer, accept it at once; if not, depart, and I will seek elsewhere.” Here a constable called out that Miller was wanted immediately at the superintendent’s office. “Let them want; I shan’t go; if Mr. Gunn wants me, let him come here; I’ll not run after him.” “But you must,” said my friend Grant. “I’ll not get up from this stone for the governor himself,” I answered. “Send Miller, the Canadian prisoner,” was again shouted by a constable. Timothy Greedy saw his advantage, and taking the coveted breeches from his bag, held them up before my eyes, and said, “Tell you what, my covey, if you want these ere for nine dinners, take ’em; and if you don’t like the bargain you may go to h——! for you don’t get ’em for a d—— mouthful less.” “Send Miller at once,” was again sung out. The villain triumphed. I took the breeches, drew them on

over the old ones, and answered to the call from the office. But nine dinners were gone and I had yet to complete a full suit! What could I do? *Borrow*, of course; all the world borrow so long as credit holds good, and why should not I? But the difficulty was, who among so ragged a set of fellows had any thing to lend? "Who will lend me a striped shirt? don't all speak at once" A pause. One says, "I don't care a d—— if you never have one; you have been lording it over us all the voyage with your fine clothing, and now you want to borrow an old shirt, you d—— Yankee." Another. "I have one you are welcome to,—but it has no collar, sleeves nor back;" and a third suggests that I should ask his Excellency for the loan of one of his, when he comes. A kind fellow who had occasionally assisted in devouring my pea-soup on the voyage, at length brought me an old shirt and waistcoat, with which I was forced to be content. "Now for a jacket—who has a jacket to spare?" "Jacket be d——" says one; "you don't want a jacket—it will hide that are fine shirt of yours." Nevertheless, a jacket was provided, but it was a mile too small, and the sleeves only reached to the elbow. An old greasy cap completed my outfit. Good heavens! what a shout arose when I was declared by all hands to be properly equipped for the approaching interview with his sacred majesty!

An hour before the appearance of his Excellency, we were all paraded in military order. In front, standing by ourselves, were Grant, Gemmell, Beemer and myself; in our rear the whole ship-load of poor fellows, in double file, and extending their line across the whole yard. The moment his Excellency made his appearance at the gate of the barracks, every cap was doffed, and the most profound silence reigned throughout our imposing ranks. The great man approaches, accompanied by some of his officials, the captain and surgeon of the Canton. His appearance, to say the least, was somewhat imposing. Clad in his official garb, adorned with his star, and covered with his cocked cap and feather, no nabob of India could affect more dignity and importance. He appeared to feel, as he strutted about, that

he was the only man upon earth. His height was, I should judge, about five feet nine inches; his circumference quite out of proportion, and clearly indicating, that however starved he might have been as "Captain Franklin," in his northern expedition, he had been more fortunate in the south as governor of the land of Nod, and that here there was no scarcity of grease and good foraging. I very naturally cast a suspicious glance at his Excellency's boots, not from the supposition that here there was any necessity for his eating the soles, as he had done at the north, but there was no certainty what the man, who was evidently a great glutton, might do. A short, thick neck, supporting a head of no ordinary size, really set off his broad shoulders to advantage; complexion dark; forehead broad, low, and standing back like an idiot's; eyes hazel, very large and dull; nose enormous; mouth very wide; chin prominent; these were the leading features of his Excellency. His countenance, altogether, was rather open, frank and honest; and I was not long in arriving at the conclusion that he was an imbecile old man; a paragon of good nature; with an excellent opinion of himself, and little wit to uphold it. How far this was correct, will appear in subsequent chapters. After taking a general survey of the whole party, he chose a commanding position, about six paces in front of the line I have described, and after half-a-dozen "*a-hems*" commenced:

"Men!" said his Excellency, (addressing himself to invisible beings, for his eyes were turned upward,) "men! you have been sent here by the laws of your country as bad men; unfit to go at large; dangerous to the peace of society; dangerous to the security of property; you are all *bad men*! very bad men indeed! You ought to have been hung instead of being sent here; but, as her Majesty has been graciously pleased to be merciful, and as the laws of England are very mild, you ought to be very thankful." (Here I ventured another glance; his eyes were rolling in their sockets like those of a person undergoing the most excruciating agony. I did not wonder, for such a speech must naturally cost a great effort.) "You have been sent here for various periods

of time, varying from seven years to the term of natural life; and you are sent here for punishment. You will, therefore, submit to whatever treatment you may be subjected, during your respective sentences, without murmuring or complaint. You will pay every obedience and respect to your superiors and all in authority over you. Although your crimes have been various, and some are of a darker dye than others, yet here the treatment will be the same; no partiality will be shown; but as your sentences are, so your treatment will be. You whose sentences are for life, will be required to do two years probation on the roads. Shorter sentences for a corresponding term. Should your conduct be good, *very good*, during the whole period of probation, you may receive some indulgence at the end of that time; but you can not claim this as a right, and if granted at all, it must be as a favor.—One single charge preferred against you will do you a very great injury; and every charge, proved before a magistrate, will be registered in your police characters, to which reference will be made whenever you apply, after the expiration of two years, for any indulgence. I must particularly caution you all against holding any communication, or forming any acquaintances with the old hands. They are very wicked, more wicked if possible than yourselves, and if you allow them to advise you, you will certainly be ruined.”—(I overheard some one sigh, “Oh, God! am I not ruined already?”) “They will teach you every thing that is bad, and make you worse than themselves. In particular I caution you to shun absconding. You are sent here for punishment, having committed crime, and you deserve that punishment. Nothing can be more wicked than to attempt avoiding your punishment by absconding. You take the bush, you rob, you plunder, you even murder your victims, but you are soon taken, tried and hanged. You can not possibly get out of the country and while you escape detection, your life is most miserably wretched! Then beware of absconding. You are well clothed, your bedding is good, and your rations are also *very good*. You ought to be thankful, for they are much better than you deserve, and you ought to be

contented. You are all *bad men, very bad men!*" Here his Excellency paused, and the surgeon and captain pointed out some whose conduct had been particularly good during the voyage, but his Excellency said that he could make no distinction here; every thing depended on their conduct hereafter. He then came and took up his position in front of myself and three companions. "Who are these?" he inquired of the surgeon of the ship. "They are state prisoners from Canada," was the answer. The great man drew himself up to his full height, for at least five minutes he stared us full in the face, his own undergoing various changes in expression. I felt that the time had come which was in a great measure to decide our fate. The horrid past, the dreaded future, visions to make the heart ache, the pulse to stop, the blood to congeal, were sporting with my imagination. Hopes I had cherished, though of late they had been waxing fainter and fainter; and now they were either to be crushed forever, or words of encouragement and assurance were to chase away the sickly fears of evil. Oh, God! the agony of that moment. I could perceive by the workings of his countenance that evil was in his heart, that the angel of mercy held no communings there. But I remembered the justice of our cause, and I felt my American blood thrill through every vein of my system, as my eye caught his and steadily fixed his gaze. I know not how I looked at the time, but I felt that I myself was also a *man*; and that he who stood before me was no more! My soul was *upright* and my body stood *erect*. I had borne the past, I could bear the future. But his Excellency's eyes are closed, his face is turned upward, toward the heavens, his countenance indicates that something is about to be cast forth of importance. Now, Canadians, hear your doom.

"You are bad men, very bad indeed. You were living under the best government and laws in the world, and you rebelled! The crime of rebellion and treason, is the highest crime known in law, under any, even the worst of governments; but to rebel against the government of England and against her excellent laws; to attempt to overthrow the one

and subvert the other, is the height of human wickedness.— Besides, to take up arms, to fight against your lawful sovereign, the best in Europe, to strive to wrest one of her best provinces from her dominions, and set up republican institutions instead, at the expense of the peace of society, the property and the lives of her Majesty's leige and loyal subjects is indeed a crime which makes me shudder. You richly deserved the highest penalty of the law, and it proves how merciful and gracious our sovereign is, when we consider that your lives have been spared." Here the surgeon explained to his Excellency that Miller was an American citizen. He did this, no doubt, with the kindest intentions, for he was my friend. "So much the worse; so much the worse. Not satisfied with being a republican yourself, you must strive to make others so. The Canadians had some excuse for their actions, if they were badly governed, but you can have none. You had no interest in the country; you had therefore no business with the affairs of your neighbors. What! attempt to set up *your* institutions in Canada! Stir up *treason* and *rebellion* in her Majesty's dominions! Invade a country at peace with your own!—violate not only the laws of your own country, but those of England! You are an *extremely* bad man. I can not conceive how any man could be so desperate, so depraved. How merciful her Majesty was to spare your life! Hanging would have been too good for you!—*Sympathiser! Bad man! Very bad man!*"

Here his Excellency appeared to be quite exhausted with the mighty effort he had made; his countenance during the whole delivery was constantly undergoing the most ludicrous contortions; his eyes rolling, and turned upward, and every other word at least, was accompanied with a puff and blow, which showed an abundance of wind. It may be presumed that I listened somewhat impatiently to this harangue,—that my blood was in truth boiling hot. But there was something very laughable in his Excellency's manner of speaking, which changed my wrath into feelings of pity, if not contempt.— Besides it was natural that the old gentleman's loyalty should be uppermost in his heart, when he saw a sympathiser, and a

sworn enemy of his sovereign lady before him. But he had not yet done with me. As soon as he had recovered sufficiently, like a true soldier in the service of his sovereign, he returned to the charge determined to annihilate the enemy.

"I have heard of your case before. You are a lawyer; well educated, and therefore your guilt is the greater. You have not the plea of ignorance to rest upon as others. They may have been deceived, but it is such as you who have deceived them. They have been led astray; but it is such as you who led them astray; who taught them to despise their gracious sovereign, and the excellent institutions of their country; who sowed disaffection in their minds, and filled their hearts with a desire for liberty and equality—a '*will o' the wisp*'—a shadow—a phantom. Equality!—you can't make men equal; there is no equality in your own boasted land of liberty; there are grades there, as well as under monarchical institutions, and you are all striving to gain ascendancy, one over another, among yourselves. What makes your case still more aggravated, is your youth. You were very young to take such an active part in a rebellion—such a wicked rebellion. It proves how depraved, how wicked you had become, at an early age; and a *lawyer*, too, to break the law yourself, and teach others to break it! Be careful, sir, to restrain your evil propensities here. Your notions of liberty and equality must be kept within your own breast. Van Dieman's Land is not America. You are a prisoner here, and as such I caution you to behave yourself. Take warning in season!" (Exhausted again.) Here I thought it time to bring the subject of our treatment under his Excellency's notice; and the following dialogue ensued:

"If it please your Excellency may we not hope to receive the same treatment here which we did in England?"

"What was that treatment?"

"The orders of the government were, that no labor should be required of us, and no unnecessary severity shown with regard to prison rules, &c. We were not treated as degraded men in any respect."

"I do not know what I can do for you. You have been

sent here under different circumstances from other prisoners. No orders have been sent with you upon the subject, and I have only instructions to receive you."

"May I not hope that your Excellency will take the treatment of the state prisoners, sent to Bermuda by Lord Durham, for the same crime, as a precedent in our case?"

"I shall be very glad to do any thing in my power for you. I hear an excellent account of your private characters, and am disposed to befriend you. I will write immediately to Lord John Russell for instructions, and will, in the mean time, take your case into consideration. I request that you will immediately draw up a memorial embodying the particulars of your cases, and send it to me through the principal superintendent's office. I will see what I can do for you."

"I thank your Excellency, and trust we shall give no reason, by our conduct, for regret on the part of your Excellency, for any favor shown us."

CHAPTER XXI.

Remarks.—Vermin.—The Notice.—Going to Church.—Half an hour's exercise.—The Felon Overseer.—Rebellion on the Sabbath day.—The Cell.—Scene in the Office.—Flogging the English Prisoners.—Gambling, Crime, &c.—The Principal Superintendent and the Bushrangers.

REFORMATION of the convict is declared to be the primary object of transportation, by the advocates of the system in Great Britain. In vain have its opponents exposed the immoralities prevalent in the hulks, and urged upon the consideration of the former these proofs of a fatal defect in its first principles. The facts are either denied, or Van Dieman's Land, the ultimate destination of the convict, triumphantly quoted as an immense prison where every temptation to vice is removed and the work of reform necessarily commences the moment he sets his manacled foot upon its shores. I listened attentively to his Excellency's speech to

the English convicts, expecting to hear something upon the subject of reformation, but was doomed to disappointment.—There certainly was truth in his words; but was that truth adapted to the occasion? He gave the men good advice, no doubt; but was it in that spirit of kindness and charity which ought to govern those in authority? His Excellency's remarks clearly indicated that punishment was uppermost in his thoughts, and that reformation formed no part of his creed. They were calculated to harden and render reckless the depraved, and confirm the young beginner in wickedness in his evil ways. No words of kindness and encouragement fell from his lips, to cheer these wretched outcasts of earth; no hope held out to them, except in patiently submitting to whatever hardships, common to a penal colony, might be imposed upon them. They were transported *for punishment* sixteen thousand miles from their native land, where mercy was unknown, and compassion a stranger. Years of hopeless misery and shame, among wretches more depraved if possible than themselves, were before them; and no matter what their conduct might be, good or bad, indescribable sufferings were to be their meat and drink. None were here to feel for their woe, and encourage them in their dark, solitary way; none to lure them from the paths of sin; none to take them by the hand, lost and ruined as they were for this world, and point out the road to a better; none to tell them there was hope;—but their only friends were to be their companions in crime; their only enjoyment the bitter fruits of sin. No wonder, then, if they gave up all for lost; no wonder if they listened to his Excellency's words with feelings of sickening despair, and turned away to wallow in the mire of crime and hopeless depravity. There were those among them who would have hailed a single word of kindness with grateful hearts. It would have lightened the heavy load that weighed upon their spirits, and strengthened their wavering resolutions to abandon crime. I asked myself, can it indeed be possible that his Excellency's heart is so hardened that he only thinks of punishment to these fallen men?—and if this is the governor, what will his subordinates prove to be? Alas! poor prisoner!

poor convict! Thou art indeed lost; not only in this world, but thy eternal doom is sealed, unless the arm of Omnipotence is stretched forth to arrest thee in thy downward course to the regions of eternal death.

His Excellency's address to, or rather abuse of, myself and comrades, requires no comment. How her Majesty's advisers came to recommend the appointment of such an *old woman* to the office which he held, is one of those difficult enigmas which the acting parties alone can solve. From what fell from his lips after the first effervescence of trumpetry, I was inclined to regard him in the light of an *honest* man, at least; and indulged the most sanguine hopes that our treatment would accord with his professions. We shall see, however, that he was acting the part of a consummate hypocrite; and, I have no doubt, in consequence of an inveterate malice against *Americans*. Strange, that even a nephew of our immortal Benjamin Franklin, could have been so destitute of honorable feelings and principles. The only solution to the mystery is, that his father was as great a tory in '76 as his brother was a republican. His Excellency no doubt felt it his duty to atone for the heinous sins of his "uncle Ben," by tyrannizing over "uncle Ben's" countrymen.

At night the Canton men were quartered in an old barn near the barracks. *Vermin* of every description were common, and I generally passed our sleeping hours in real or imaginary battles with these enemies to rest. Who that has ever engaged in deadly combat with a *flea*, or peradventure a *louse*, will not envy me the happiness I experienced in these nightly engagements, when thousands of demons beset me? Thrilling scenes those, kind reader. Shouldst thou ever chance in thy peregrinations in search of pleasure, to fall in company with these vicious creatures, my advice to thee is, *run*; flee for thy life; never think of contesting the field, for if thou art not slain, they will wound thee in ten thousand places. This glorious privilege, however, was not allowed me; and I was obliged to fight or die. Many a time have I exclaimed in the language of Samson, "heaps upon heaps, heaps

upon heaps have I slain," but never found the number of the living perceptibly diminished.

The second day after landing, the men were all separately called into the superintendent's office, and notified that they would be required to serve certain periods of probation on the roads, according to their respective sentences. Myself and comrades were informed that being sentenced to Van Dieman's Land for life, we must serve two years of this horrid slavery, before any indulgence whatever would be granted us. I inquired if his Excellency's promise, made only the day previous, had been forgotten; and was informed by Mr. Gunn, that this notice was only formal, and would not be enforced unless the governor, after due consideration of our cases, should feel it his duty to treat us with severity. He also added that there was little doubt that the liberty of the island would be granted us upon certain conditions, on account of our being state prisoners, and the circumstance of no orders with reference to our treatment having accompanied us from England.' I intimated very plainly in reply, that I could but consider any attempt to reduce us to a state of felony as a flagrant violation of justice.

The next morning all of the English prisoners were sent out to labor on the roads; but we were told at the same time, that no work would be required of us at present; and that we had nothing to do but remain in the barracks and pass our time as we thought proper. I lost no time in drawing up a memorial to the governor, in which I urged our claims to liberal treatment; stating at the same time, that if our conduct did not prove exemplary in every particular, we would not complain at the deprivation of the indulgence we abused. I also wrote to Mr. Lawrence, member of the Legislative Council, who resided at Laurenston, on the opposite side of the island, enclosing a letter of introduction from Mr. Hume, and soliciting his influence in our behalf.

On Sabbath morning the prisoners in the barracks were all mustered and required to attend divine service. The Catholics, about two hundred in number, were marched under the charge of constables, to the Catholic church in the town.—

The Protestants attended the church I have already noticed as standing at one end of the barrack yard. I felt not a little anxious to see if the one day in seven was made a blessing; or, like the other six, a curse to the poor prisoner. Surely, thought I, the clergyman will say something about reformation to the prisoners, if the governor did not; surely in going to church these poor men take one step at least toward heaven; in that sacred building I shall see one good man, hear a voice of kindness and listen to words of love; the wicked will for a few hours cease from troubling; the mouth of the blasphemer will be stopped; there will be peace and rest to my spirit, and I may taste of the bread of eternal life; for there will be "a feast of fat things; of wine on the lees; of fat things well refined." I thanked God in my heart, that although in a land of crime, I was not beyond the pale of christianity, and that the holy Sabbath day was here remembered. But was it indeed the house of God, and the gate of heaven? O, thou Eternal Spirit! who hast proclaimed thyself gracious and merciful to sinful, erring man,—forgive what thy pure eye saw amiss within the walls of that temple called by thy name. Thou art indeed "long suffering and slow to anger," else hadst thou opened the earth and swallowed up that sinful congregation. The four Canadians were permitted to go in before the others, but in a few moments there was a rush, and a scene which baffles description, and which I still shudder to contemplate. Those who wore no irons were first, and as they came pouring in, pushing, pulling and crowding each other, horrid blasphemy and abominable obscenity made the building ring.—Then came the chain gang, about five hundred in number, and such rattling of chains, such sounds of hell! I pressed my hands upon my ears and exclaimed to myself, "O, God! is this thy house, where sinners are to be taught to flee from the wrath to come—thy praises sung—thy blessing invoked—thy holy name called upon? The prisoners were seated in two large wings of the building, one on the right and the other on the left of the pulpit, or desk, in front of which was a third wing, used by the inhabitants of the town, who were hidden from our sight by a large screen. When the clergy-

man made his appearance the noise subsided to a low hum of voices, amounting to a perfect jargon of oaths and curses; but which, however was so loud much of the time as to drown the reverend gentleman's voice. He was an elderly man, and I remarked that his countenance did not indicate his sacred calling; and spoke not the spirit of the meek and lowly Jesus. He read the service as if it were a disagreeable and disgusting task; and his sermon was a dry disquisition upon one or two imaginary metaphysical points, of no consequence to his hearers either in this or the other world. He kept his eyes constantly fixed upon the screen, behind which sat the god he worshipped; for during the whole service I did not once see him turn to his convict hearers, or address a single word of exhortation to them. The whole appeared to me to be a solemn mockery, too dreadful for reflection—too horrid to be endured. On looking about me, I could not discover more than twelve, among twelve hundred prisoners, who appeared to be taking any notice of the service. Some were spinning yarns, some playing at *pitch-and-toss*, some gambling with cards; several were crawling about underneath the benches, selling candy, tobacco, &c., and one fellow carried a bottle of rum, which he was serving out in small quantities to those who had an English sixpence to give for a small wine-glass full. Disputes occasionally arose which ended in a blow or kick; but in these cases the constables, who were present to maintain order, generally felt called upon to interfere. If any resistance was offered to their authority the culprit was seized by the arms and collar, forcibly dragged out of church, and thrust into the cells beneath, there to await trial and summary punishment on the morrow. When the service was concluded, another rush took place, and shouts and songs commenced. This, reader, was the boasted reformation of the convict! The people of England are told that their fallen countrymen are sent here to be won, by judicious treatment and christian advice, from their evil ways; that they may be restored to usefulness in this world, and their happiness secured in the next. But, alas! there is no road from Van Dieman's land to heaven, while a thousand lead downward to the

regions of eternal death. Should this book ever fall into the hands of any who are entrusted with the reformation of the prisoner in that ill-fated colony, let them read and ponder; for the time is coming when they must render an account of their stewardship to Him who is no respecter of persons.—Will not the convict, whom they despise, rise up in judgment to condemn them?

On the following day a constable informed me, in a very bland tone of voice, that “the principal superintendent wished particularly to see me in his office, if I was not otherwise engaged.” I immediately waited upon that gentleman, wondering what had occurred to call forth all this condescension, and was thus addressed: “Ah, Mr. Miller, how is your health this morning? I trust our climate will agree with you, for it is the finest in the world. I doubt not you will be enabled to enjoy yourself during your stay in this delightful island. I do wish you could make up your mind to settle here. We want such young men as yourself and companions. There is a fine opportunity for usefulness, and if you would only give up your republican notions, you would stand a capital chance of succeeding in almost any branch of business. By the by, a desire to serve you prompted me to send for you this morning. I know that you Americans detest idleness, and thought you would deem it a privilege to do some trifling labor for exercise. Now, the overseer of the barrack yard wants a little help for about half an hour in the morning in sweeping, &c. If it is any privilege, you Canadians can lend him a hand. The service will be perfectly voluntary on your part, and as the governor has his eye upon you, it may influence him in his decision upon your cases. When he hears you are industrious, which I shall certainly report to him, for I wish to serve you, he will doubtless reason that industrious and steady young men, like yourselves, are not likely to become a burden to the colony, and feel no hesitation in granting you the liberty of the island. You can talk with your comrades upon the subject, and act as you think proper. My advice, however, would be to do as I have proposed.”

After a long debate upon Mr. Gunn's proposition, we determined, inasmuch as it was voluntary, to take half an hour's exercise every morning at sweeping; but alas, this was a fatal error; for Mr. G. was only trying the yoke upon our necks to see how it would fit. Had we only refused to perform any labor whatever, I doubt not it would have saved us years of slavery; for even the tyrant Franklin would have hesitated before using compulsory measures to compel state prisoners to labor as felons. It would not sound well in the public papers of Great Britain; but if we could be coaxed and deceived to shoulder the burden ourselves, all difficulty in the matter would be at an end, and they could by degrees force us into absolute slavery.

"Here are some brooms," said the overseer of the yard, as he threw down half a dozen articles of that description before us. "This is a good one," he continued, offering one to me. "I understand you will assist in sweeping the yard; it is mere nothing—just half an hour's exercise; will do you good, and ——." What he would have added I cared not, for disliking his appearance, and the air of familiarity he assumed, cut it short by saying, "This half hour's exercise, as you term it, is voluntary on our part? there is to be no compulsion. As to sweeping, you must give me some instructions, as I was never bound apprentice to a *sweep*." Here the fellow turned his back upon me, and muttered, "the d—— Yankee *quill-driver*!" He was, according to his own account of himself, a desperate fellow; had been a prisoner in the colony *seventeen years*, during which period he had always been in trouble, and at least nine-tenths of the time in *chains*. Robbing, thieving, house-breaking, &c., were crimes for which he had been repeatedly tried and punished; but he had lately resolved to leave off such conduct, and Mr. Gunn had promised also to stand his friend, and placed him in his present situation as an earnest of the future. If crime was ever stamped upon the human face divine, this man's features bespoke the villain. Depraved, debased, he looked the demon, acted the devil, and spoke the hardened wretch in whose breast every ennobling quality was forever

annihilated. Low, vile, blasphemous language poured forth like a stream of lava from the crater of Vesuvius, whenever he opened his mouth to speak. And this man was our first overseer in the land of Nod! Had I known the truth, there would have been some flogging before I had taken a broom in my hand. The fellow for the first day or two was *monstrous* kind, for he was constantly singing out, "I say, mate, look and see how I sweep; this is the way to do it," fetching an extra flourish with his broom—"you will soon learn to use a broom as well as a quill, by ——! you are going it capital! my bloody eyes! how quick you learn!" &c. But soon there was a little dirt which required to be wheeled, a few tubs to be emptied, and lastly, half a dozen wards to be cleaned, so that the half hour's exercise soon amounted to more than *half a day*. This last business of emptying tubs and cleaning wards, I soon declined; for I caught our worthy overseer *putting away* (eating) what he called "a bloody good feed," which he had obtained from the wardsmen whose dirty work we were performing. This made the wretch angry, and ever afterwards there was no epithet in his vocabulary too good for me. Grant, Gemmell and Beemer continued to be "good coveys," and our overseer made a fine billet of it. The wardsmen, who had nothing to do but keep their respective departments in order, got all their hard labor performed by gorging the scoundrel with a "*good tucker*," as it was called, but seldom indeed did my comrades get a morsel of the savory dishes upon which he regularly dined. The week passed away without any change except the growing insolence of the overseer, and the gradual increase of our labor. They were constantly drawing the cords tighter, and soon instead of being asked, we were *ordered* to do this and that piece of work, by Mr. Gunn, as though we were already English slaves.

Sunday again came, and after the men were mustered for church, our overseer ordered the four Canadians to remain, as the English prisoners were marched off, "Get your brooms," said he, "and sweep the yard." My comrades obeyed, but I stood my ground. Bad as the church was, I

preferred breaking the Sabbath by going there, to sweeping the yard, and the following altercation took place :

“ Why don't you go for your broom ? ”

“ I shall not take any half-hour's exercise to-day.”

“ The devil you wont ! ”

“ Certainly not. It is the Sabbath day, and I can not.”

“ But you shall, though, by —— ! I will get you flogged if you don't get your broom at once.”

“ It is needless to talk upon the subject, for I shall not.”

“ You will offend Mr. Gunn, who is your friend, if you don't.”

“ I shall offend my God, who is greater than Mr. Gunn, if I do.”

“ God Almighty is nothing here compared with Mr. Gunn. Holloa ! there, send a constable,” shouted the overseer. The constable came, and another dialogue similar to the first ensued, which ended in my being ordered to the cells. I led the way, and the door being open, walked in. It was a horrid hole, about eight feet long, three and a half feet wide, and four feet in height. There was no floor, but the mud and filth were more than twelve inches in depth. No nuisance tub was allowed the poor wretches confined there, and sometimes seven or eight were thrust in at a time, to remain from one to three days. No language can describe this dreadful place. I afterwards assisted in cleaning out the same cell, and thirteen barrow-loads of filth were wheeled away from it alone. Such was the place into which I was ordered, for refusing to sweep the yard on the Sabbath day. They closed the door after me and talked together for a few minutes outside, when the constable inquired if I would work, provided they would overlook my offense and not report it to Mr. Gunn, who would certainly flog me. “ Fifty lashes,” said he, “ is the least punishment he ever inflicts for such a crime.” “ I shall remain here and take the flogging,” I replied. The door, however, was re-opened, and I ordered out. “ Now,” said they, “ go to church and be d—— to you ; but depend on a flogging in the morning ; ” and I went to church.

The next morning I was duly summoned to appear before that great man, of whom the overseer said that the Almighty was nobody in comparison. The overseer and constable were there before me.

"I understand you refused to sweep the yard, yesterday," said Mr. Gunn.

"I did."

"For which you are liable to be flogged. Have you not read the rules for the guidance of the prisoners here; more particularly with reference to obeying orders?"

"I have read the Bible."

"You are a prisoner, and must obey orders or be punished."

"I am a *man*, and must not break the commandments of the great Jehovah, who has said, 'Remember that thou keep holy the Sabbath day. Six days ——.'"

"That will do," interrupted Mr. Gunn; "I understand my catechism."

"I was afraid you did not."

"You deserve a flogging."

"For not working Sunday?"

"For being d—— saucy."

"I am not aware that I have given occasion for the use of any oaths."

"Your American independence will not do here. You are in a penal colony, and you shall obey orders or be flogged."

"I am sensible of being in Van Dieman's Land, and in bondage, too; and it appears there is no Sabbath, no Bible, no God here. Only one week since, and you told me it was entirely discretionary, with myself and comrades, to work or let it alone. Now, it would seem, we are held as slaves, and required to do the bidding of a depraved wretch, against God and religion. [Here the overseer, to whom I referred, interrupted me, exclaiming, 'Me a wretch! he said yesterday, sir, that he didn't care for you, sir, not half so much as for God Almighty, sir. If you only knowed, sir, how he talked about you, sir, you'd flog him at once, sir.']

I am in your power ; flog me to death if you think proper ; I will never work on the Sabbath day ; but remember, sir, if you fear not God, that you have superiors, if not here, in Great Britain, who shall hear of this, and who will not, nay, dare not, attempt to justify your conduct. Is it possible that a magistrate, and the principal superintendent of convicts in this colony, will sit in judgment upon, and condemn a man, for refusing to break the commandments of God ? Much as I dislike a flogging, I shall glory in it for such a cause. It will cost me pain, but not disgrace."

"Overseer," said Mr. Gunn, addressing that worthy functionary, "never ask this man to work again on the Sabbath day, and never show your face here again with any complaint against him." Turning to me, he said, "So long as your conduct continues good, you will find me your friend. Always act conscientiously, and you need not fear any thing in Van Dieman's Land." After this I went regularly to church, but my comrades were always required to get their brooms and sweep the yard.

From twenty to thirty prisoners were daily arraigned for trial before Mr. Gunn. Their offenses were, in general, a breach of the probation regulations, idleness, impertinence to overseers, disobedience of orders, absconding, petty theft, &c., &c. Offenses of a more serious nature were tried in the higher courts. Of those convicted, from five to ten were daily flogged, while others were sentenced to seven, ten, fourteen, and occasionally twenty-one days' solitary confinement in cells similar to the one already described, where they were allowed a pound of bread and a pint of water, daily. Many were also sent to the treadmill, and not a few to Port Arthur. A flagellator was appointed for the express purpose of inflicting corporeal punishment, and the scenes enacted at the *triangles* were most revolting. Two-dozen lashes, which was considered a light sentence, always left the victim's back a complete jelly of bruised flesh and congealed blood. A pool of blood and pieces of flesh are no uncommon sight at the triangles after a dozen have been flogged. The cry of "murder !" and "oh, my God !" were

not unfrequently repeated by the sufferer during the infliction of the punishment, loud enough to have been heard a mile; while others of more nerve would clench their teeth, and endure all without even a groan. Some idea of this inhuman punishment may be formed from the fact that the sound of the *blows* upon the naked back of the sufferer may be heard at the distance of one hundred rods. Many faint while undergoing the torture, and some are carried from the *triangles* to the hospital, where they pine awhile and die.

The daily rations allowed to the prisoners is, for breakfast and supper a pint of *skilly* and six ounces of coarse bread; for dinner, twelve ounces of fresh meat and eight of salt, one half pound of vegetables made into soup, and a pound of bread. The meat is always of the poorest quality, and as it passes through many dishonest hands, but a small portion of it reaches the men. I have no hesitation in asserting that at least one half of the crimes committed by the prisoners, and for which they are so severely punished, may be attributed to the insufficiency of their rations. A craving appetite brings many a poor fellow to the triangles, and I am perhaps justified in adding, the gallows.

After spending a year or two in the colony, the prisoners become such adepts in crime, that it is with the greatest difficulty they are detected and brought to justice. They league together under a systematic plan, in which they are aided by a vulgar language of their own, and plunder whatever comes in their way, too often with impunity. Drunkenness is a common vice, and with their dishonest gains they find no difficulty in indulging in it. Nothing is more common than gambling. I have seen from twenty to three hundred dollars won at a single stake, by the old hands, in the mess room which I have described. Many of the monied characters never dream of eating the rations allowed by government, but live on the fat of the land. A single penny would always bribe the gate-keeper to let in a "swag" of provisions. The success of these hardened prisoners often tempts the new hands to early practice in crime. In the whole system pursued in the barracks, both by the prison-

ers and those in authority, I could never discover a single redeeming feature. Every thing was calculated to harden the hearts of the former, and insure their perseverance in a downward course. Mr. Gunn was, perhaps, as good a man as could have been found, for his situation; but the system was such as must necessarily produce the fruits I have described. This gentleman owed his office to the following singular event: Many years since he was a subordinate officer in the British army, at which time fourteen bush-rangers, all Irish convicts, headed by a brave fellow called Brady, kept the whole island in constant uproar and alarm for several years. Being well mounted, and armed to the teeth, they roamed over the country with impunity, robbing and sometimes murdering the inhabitants. Settlers who ill-treated their convict servants were generally the objects of their vengeance; and many a master was tied up to a tree, and his servants whom he had flogged, made to give him an equal number of lashes in return. If any reluctance was shown on the part of the abused convict to redress his wrongs, Brady would himself turn flagellator. Upon one occasion they suddenly rode into Hobart Town, in open day, put up their horses at the first tavern, called for dinner, played half an hour at billiards, traded at some of the principal stores, paid their respects to some of the first ladies and gentlemen of the place, and rode off without being molested; so great a panic did their presence create. Large rewards were offered by government for their heads, without, however, the desired effect; while many who went in pursuit of them lost their lives. They were at length surprised by a party of military and soldiers, headed by Mr. Gunn, and nearly all either killed or captured. During the engagement Mr. G. lost an arm, from a shot by Brady, who generously fired at that limb instead of shooting him through the heart or head, as he might have done had he been disposed. Brady and his comrades were hung, and Mr. Gunn promoted to the important station he has since held. He is a man of extraordinary mental powers. He has only to see a prisoner once, to be able to detect him in almost any disguise for

years afterwards. It is said he can call every prisoner in Van Dieman's Land by name, when he meets them, tell the name of the ship in which they arrived, the year and day, their original sentences, additional sentences received in the colony, &c. &c.; in short, that he never forgets any thing.

CHAPTER XXII.

The Canadians doomed to Slavery.—The Reward of Treachery:—The Road Party.—The Billet.—Mental Sufferings.—The "Buffalo."—Beemer is sent to Port Arthur.—Interesting Incident.—Gemmell up the Chimney.—The Overseer Caught.—A *Smash*.

WE had been in Van Dieman's Land four weeks, when an answer was received to our petition, which stated that "his Excellency, the Lieutenant Governor, after due consideration of our cases, could see no sufficient reason for treating us differently from prisoners sent here for other offenses;" and an order accompanied the notice for our immediate removal to the Brown's River Road Station, distant seven miles from Hobart Town. Beemer was left behind, and immediately installed into the office and emoluments of constable, for his treachery on board the "Captain Ross." The reader can make his own comments upon the conduct of the governor.

Here, then, was an end to all hope. We felt that our only chance now was to escape from the island. This, indeed, had been my determination from the first, and I was on the lookout for a favorable opportunity; but, alas! I little knew what obstacles were in the way. After receiving each a new suit which was (with the exception of shoes, of which three pairs were allowed yearly) to last us six months, we were conducted by a constable to our new home. The station was situated on the side of a hill, about three hundred feet above and three fourths of a mile distant from the Derwent. Two acres of land had been cleared, and two

huts erected, one for the overseer, the other for the men. The former was barely habitable, but the latter was scarcely any protection against either cold or wet weather. A large fire-place, similar to the American back-woods fashion, was in one end of the hut, the chimney to which was little more than an opening through the roof. There were only forty men at the station when we arrived, most of whom were probationers. From daylight to dark were the working hours, with the exception of half an hour for breakfast and dinner. The employment consisted chiefly in felling trees, cutting and carrying spars to the station. These were from twelve to thirty feet in length, and from ten to eighteen inches in diameter. They were carried upon the shoulders of the men through the thick underbrush, from fifty to two hundred rods. This was exceedingly hard work, as the men often had from one hundred to two hundred and fifty pounds to carry, and the ground was very rough and uneven. I was employed in this manner for a few days, but the overseer was kind enough to change my occupation, and shortly afterwards made me "watchman" of the station. This was an agreeable change, as it saved me from the performance of any hard labor, my duty being to keep watch on the outside of the hut, during the night, to see that none of the inmates got out to rob the *hen-roosts* and potato-yards of the surrounding inhabitants; a trick which they were always ready to perform, if an opportunity occurred. During the day I could sleep or not, as I thought proper. To describe our mental sufferings, arising from constant contact with the depraved beings among whom our lot was cast, would be a difficult task. A sense of the injustice we were suffering at the hands of our enemies was continually burning in my brain. "I am an American citizen—I am a British slave!" were thoughts which I could not banish for a moment; and, but for the sinfulness of the deed, I should have put an end to my existence rather than endure the dreadful reality. In vain did I strive, during those long nights of vigil, to forget what I was; in vain did I gaze upon the bright and beautiful stars with which the southern heavens are studded, to ab-

stract my thoughts from the subject; and not until I turned my eyes upon that beautiful constellation, the "Southern Cross," and remembered that my Savior bore His cross up Calvary, could I become in the least reconciled to my hard fate. Then would I shout the watchman's call, "All's well!"

"Misery likes company," is an old adage, which experience, to the disgrace of human nature be it said, but seldom disproves. Although we may not actually feel pleasure in seeing others as miserable as ourselves, there is something agreeable in the circumstance of having company in adversity. Let not those, however, who have never drained the cup of adversity, despise the unfortunate for this failing. None but a fellow-sufferer can truly sympathise with them, and make due allowance for the weaknesses of human nature. Pity may indeed be awakened in the breast of him who is a stranger to affliction; but then it too frequently begets contempt. The desire to awaken an interest in the breasts of our fellow men, is a weakness common to our race; but this seems a wise provision of nature; for, to its effects may be attributed a multiplicity of praiseworthy actions, which, while they ameliorate human woe, keep alive and cultivate the most noble principles in our nature, and form the basis of the most enduring and exalted friendships.

The ship "Buffalo" arrived at Hobart Town on the 14th of February, with one hundred and fifty-seven state prisoners, seventy-eight of whom were from Upper Canada, and the remainder from the lower province. The former were landed at Sandy Bay, but the latter were conveyed to Sidney. The reason for this separation was thus explained by Sir John Franklin: "The French Canadians are a simple, ignorant people, and were doubtless made the dupes of others; but the Upper Canadians, a large majority of whom are American sympathisers, have no such excuse, and I shall keep them here for punishment." Had there been no Americans in the party, his Excellency's desire to *punish* would probably have been less.

Being desirous of joining my countrymen, I applied to

Mr. Gunn for that purpose, but he advised me to remain with the English felons. Upon inquiring his reasons, he said: "The governor has determined to treat them with severity, and your condition will be far better where you are." "Good heavens!" I exclaimed, "is it possible that Sir John Franklin intends making their condition worse than that of the English felons?" "I know from his own words that he does, and I advise you, as a friend, to keep yourself as distinct from them as possible. I am your friend, and would serve you; but if you are with your countrymen, I fear I shall not be able to do so."

Reader, the character of Sir John Franklin begins to appear in its true light. This representative of VICTORIA was a tyrant in every sense of the word.

We had been at Brown's River only four weeks, when we heard that *Beemer* had fraudulently obtained our clothing, books, &c., from Mr. Williams, the store-keeper, sold them, and was rioting upon the money. This was an outrage which none but a wretch lost to all sense of honor or shame, could have perpetrated. His pay as constable amounted to two dollars and fifty cents per week; three days of which, having no duty to perform, he was allowed to work at his trade (carpenter) in town; and could easily have earned as much more. He knew that we were in destitute circumstances, and the books, being all keepsakes, were invaluable to us; yet he scrupled not to rob us of our little *all*; not that he might hoard the money thus obtained, nor use it in any way advantageous to himself; but to lavish it upon females of abandoned character. The overseer allowed me the privilege of going to town for the purpose of complaining to Mr. Gunn, who forthwith tried and sentenced him to twelve months' hard labor at Port Arthur.

After the expiration of his sentence, he was sent to the roads, where his conduct continued very bad. He was repeatedly tried and sentenced to solitary confinement, the chain-gang, &c.; and when I left the colony (in September, 1845,) there was no prospect of his condition ever becoming better. In all probability he will spend the remainder of

his days in the same manner. Such was the reward of the TRAITOR BEEMER.

Volumes have been and may be written upon the different traits of human character; yet the conventional rules of society so often place a restraint upon nature, and the heart is so accustomed to guard itself against the betrayal of its secrets, that it requires some sudden and unexpected emergency to break down these barriers, that Nature may assert her supremacy. Such occurrences lay bare the secrets of the soul, its weaknesses, its follies, and its most noble qualities. Who has not heard, who has not read of, who has not witnessed the strength and constancy of maternal love? What man so dull of comprehension as not to see its effects wherever he turns his eyes? What child so insensible as not to feel the potent spell which a mother's love creates, when every day and almost every hour of its existence is hallowed by it? Nor is this principle confined to civilized life; wherever the "human form divine" is found, in the breast of woman is it planted. Though she be an uncultivated savage of the new world, a Hindoo, a Hottentot, a native of the South Sea islands, or a dweller in the frozen regions of the north, amid mountains of ice, her pulse beats quick at the touch of her offspring, her breast is warm with holy emotions toward it, and her heart is the throne of maternal love!

Having occasion to visit the colonial hospital, I stood for a short time leaning against the railing of the yard which encloses the building, an attentive observer of the scene before me. Several convalescent patients were promenading the walks, hope and impatience alike visible in their pale features; and the remains of a poor youth, who had been less fortunate, were carried past me to the *dead-house*, which was nearly full. A deadly malady was then raging in the city, and the free as well as bond became its victims; though more commonly the latter, who, from being herded together in large masses, filthy, half starved, overworked, and subject to severe mental sufferings, became an easy prey

to death, more particularly as the convict patients were sadly neglected.

I observed a plain, decent-looking woman, apparently about fifty years of age, come out of the hospital door, and proceed across the yard toward the street, when two young men entered the gate, one of whom was dressed as a convict, and talking in an under tone to his companion. His voice was scarcely audible, but the woman, who was walking in an opposite direction, suddenly gave a scream, turned round, and with an expression on her countenance which I can never forget, fixed her eye upon the convict. But it was only for an instant. Another wild scream of joy, such as I never heard before, burst from her lips, and in a moment she had the bewildered youth in her arms, exclaiming, while her breast heaved with the convulsions of an almost bursting heart, "O, merciful God!—O, my John!—O, merciful God!—O, my John!—O, my *bairn*!—my *bairn*! my own dear *bairn*!—O, blessed Mary!—O, my own dear bairn!" Surprised, the youth at first struggled for deliverance from her hold, but she clasped him still closer, repeating the same passionate expressions, and covering his cheek with kisses. He appeared, at first, to feel ashamed, for many eyes were upon them; but the mother heeded naught but her son. At length nature asserted her right in the convict's breast, and he returned her embraces, exclaiming, "O, my mother!—my own dear mother!" and like little children they sat down and wept together; the mother and child—the parent and son—the friend of friends and the outcast. After the first burst of passion had a little subsided, the mother carefully surveyed his features, and again exclaimed, "Yes, it is no delusion; it is my own bairn, my long lost bairn! my own dear John! Oh, this is too much," pressing her hands upon her still heaving bosom, "my poor heart will burst! Blessed and holy Virgin! I have indeed found my lost child!" But the cup of joy had its mixture of bitterness, for now she noticed that he wore the garb of a convict. "Oh, John," said she, "and are you a prisoner? What have ye done, John, that I find ye clad thus? But your poor mother will not

upbraid you ; you are my own bairn, my own flesh and blood, and though all the world deny you, and cast you out, your own mother will not, my poor bairn !” The convict wept afresh. “ Come, you must not cry ; I did not mean to hurt your feelings ; am I not your own mother ? Come with me, John, to my house, which is near by, and tell me all ; and I will tell you how your poor mother has sought you ;” and they walked away together. Happy mother ! happy convict ! I afterwards learned their history, which was as follows : The son left his home and widowed mother in Ireland, in 1830, being then fourteen years of age. He wandered about the world for seven years, when he was tried for a felony, and sentenced to transportation for ten years. During the whole period he had never heard from his widowed mother, who sought him for years, and at last gave him up for dead. She had come out to the colony with some friends, as an emigrant, to spend the remainder of her life. On the day referred to, she had gone on an errand of mercy, to minister to a poor sick friend in the hospital, and the angel of mercy met her there. Her only son, who was lost, she thus found. After a separation of ten long years, she knew the voice of her offspring, and with the instinct of nature clasped him in her arms. And when she found him an outcast of earth, she loved him not the less ; she was the mother still ! And thus is it with thee, O Nature ! Thou regardest not the conventional forms of society ; thy laws are not always those of man ; but where gentle, tender woman is, there thou delightest to dwell. Thy dominion is her breast ; thy throne her heart ; and while all else beneath the sun is constantly changing, thou alone art unchangeable, eternal ! Thou makest the dying to revive, the blind to see, the dumb to sing, and the poor outcast convict to rejoice !

One afternoon a French whaling vessel dropped down the Derwent, and anchored opposite the station, about half a mile from shore. Here, then, was a possibility of escape ; and as such chances were not common, we resolved to improve it, if practicable. It was proposed that I should assist Grant and Gemmell in getting out of the hut, through

the chimney, when the other inmates were asleep, and the trio swim off to the stranger, running the risk of a favorable reception. If unsuccessful, it would be easy enough to return and be in our places in the morning. At the appointed signal, I mounted the chimney on the outside, to render the requisite assistance in effecting their egress—(*the trusty watchman!*) Gemmell soon made fast to the rope which I let down for the purpose, and then, “*haul away*” was the order. I tugged at the rope, and the great lump of flesh slowly ascended, but when about two thirds of the distance was accomplished, the rope stuck fast to my fingers. Gemmell whispered, “It’s all right; pull away.” I replied, “It’s all wrong, though, for by my hopes of liberty, I can not raise you another inch.” “Then be d—— to you,” said he, “it’s all a flash in the pan, and there’ll be h—— to pay before I get back into my nest again. “Grant,” whispered he, “I say Grant where in the devil are you? can’t you give me a hoist? be quick, for I shall soon roast here.” [There was a bed of red-hot coals underneath.] Grant was giggling in the corner of the fire-place, ready to split with laughter at the fun. At this moment a large turf tumbled from the top of the chimney straight into Gemmell’s face, (it was all accidental, of course.) “Let go the rope,” shouted he, loud enough to awaken all hands. I required not a second bidding, and he fell heavily into the hot-bed below. “What in h—— is all this fuss about?” exclaimed at least twenty voices, in one breath; but Gemmell stealthily crawled away to his berth, rope and all, and was snoring at a terrible rate before they had time to make any discoveries; while Grant retreated to a dark corner to enjoy a hearty laugh at our poor friend’s expense. As for myself, I scrambled down from my elevation, and with right good will roared out the watchman’s cry, “*All’s well!*”

About the middle of March, complaint was made by the English prisoners, that the overseer was in the habit of robbing them of their rations. Mr. Gunn visited the station, and an investigation took place. The overseer’s hut was searched, and a large quantity of our provisions was found

stowed away underneath his bed. He was immediately discharged, and the station broken up. Seldom indeed does it happen that the prisoners are so fortunate in making complaints. Often do they get a flogging if unable to prove their charges.

CHAPTER XXIII.

Removal to Sandy Bay.—Treatment of the Canadians.—Death of Nottage and Curtis.—A Lady's Opinion of the Governor.—Starvation and Shell-fish.—Four Canadians abscond: their sufferings and capture.—“The Hunters of Kentucky.”—Removal to “Lovely Banks.”—Scenery.—The Irish Superintendent and Convict Clerk.—Mr. Braberson's Compliments, *alias* “Tip,” *alias* Bribery.—Death of Williams.—Treatment of the Sick.—Cells.—The Triangles.—Robert Marsh and the Wheelbarrow.—Dreadful sufferings.—Opossum Eating.—The Hand-carts.—Preparations to Abscond.

It was not until after the most urgent solicitation on my part, that Mr. Gunn consented to my joining my countrymen at Sandy Bay. “Depend upon it,” said he, “you will fare much worse there than with the English prisoners. They are marked for severe treatment.” I replied, “I shall esteem it a privilege to share their fate, and would rather spend my whole life in slavery with them, than two years comparative ease among such wretches as the English prisoners.”

Seldom have I experienced more pleasure than when I found myself, with my two companions, among these victims of Sir John Franklin's tyranny, and received their warm and friendly greetings. They were all strangers, but they were MEN. Probably there was not a coward in the party, and most of them were upright and honorable. Men of business and good morals, they might have exerted a most beneficial influence in the land of their exile, had they been honorably dealt with. I have no hesitation in asserting that they were far superior as good members of society, in every respect, to any equal number of freemen which could have been selected in either district of Van Dieman's Land, the city of Hobart

Town excepted. It is in vain that we look for any justification of their treatment. The rebellion in Canada was effectually crushed before they were sent out of that country, and it could not have been to deter others from following their example. It is a singular fact that their treatment was carefully concealed from the Canadian people, and in 1845 but few persons in the Canadas knew, or even dreamed, that they had been doomed to the fate of felons. It could not have been for the purpose of reformation, for their moral characters were good; nor could it have been supposed that such punishment would diminish their ardent attachment to the cause of liberty. Why, then, were they thus treated? To gratify *Franklin's* malice. Upon their arrival he told them he had written to Lord John Russell for instructions upon the subject of their treatment; that until an answer arrived he should place an overseer over them, who would merely require a little labor as healthy exercise, the object of which was not to punish; and, finally, that he was disposed to treat them with the utmost possible lenity. When, however, no resistance was made to this "healthy exercise," slavery, worse than death itself, began. I have since ascertained, from unquestionable authority, that Franklin expected that the party would refuse to work, in which case he would have used no compulsory measures, *through fear of consequences*. The falsehood and deceit thus practiced by her Majesty's representative, are a striking comment upon the misgovernment to which colonies are always subject.

The party consisted of seventy-six men when we joined them. Eighteen of these were captured at the battle of Windsor, and the remainder at Prescott. [A concise account of these battles will be found in a subsequent chapter.] Asa Priest, of Auburn, N. Y., died on the passage out. William Nottage, of Amherst, Ohio, and Lysander Curtis, were in the hospital. Nottage was blown up while blasting rocks. He lingered several weeks, and died, uttering imprecations against the British government. He was interred in the Catholic burying ground with more decency than is usually shown to the remains of prisoners. The reverend Father Therry, of

Hobart Town, attended him during his illness. Curtis, whose health was greatly impaired on his arrival, after spending a few days in the hospital, was sent back to the station, and ordered out to work. Mr. Marsh gave me the following account of the *murder* of poor Curtis, the day I joined them: "We were yesterday," said he, "wheeling dirt in barrows, which were very heavily loaded. Curtis looked very ill, and during the morning was often under the necessity of setting down his barrow to rest. On these occasions, the overseer (one Thomas Hewit, a pardoned felon,) would utter some horrid oath, and tell him to go on with his work or he would send him to the cells. In the afternoon he sat down his barrow and told me he was very ill, and could not work. I told him to speak to the overseer for permission to rest. He did so, but the inhuman taskmaster replied, 'D—— your bloody eyes, wheel it or die by it; I don't care which!' He again attempted to wheel the barrow, but soon fainted. I threw some water in his face, and he recovered, but said to me, 'I feel that my work in this world is nearly accomplished. I am glad of it, for it is better to die than live.' Several spoke to Hewit, begging that Curtis might be allowed to go to the station, but received nothing but oaths in reply. The poor fellow lay on the ground till night, when we carried him in. I watched by his side all night, and thought once that he was dying. He was very sick. This morning the superintendent ordered him to be taken to the hospital in a hand-cart. When he left, a tear stole down his cheek as he exclaimed, 'Farewell, comrades! we shall not meet again; but write for me to my poor friends. Oh! this is indeed very hard to bear!'"

On the third day we were informed that poor Curtis was no more. Many of our party envied him his rest. Some of us had a few shillings in money; with this we purchased some crape which all wore on the arm for four weeks. This little tribute of respect to our murdered comrade attracted some attention from the congregation where we attended church every Sabbath. I overheard the following conversation between a young lady and her father, whose pew was opposite our seats:

"Only look, father, the poor Canadians all wear crape. I never saw prisoners wear crape before; why is it?"

"One of their number is dead. It seems they have some feeling for each other; poor fellows! they are very different men from our own convicts, but I fear they are treated even worse."

"Do look, papa, how sad and downcast they nearly all appear. How I pity them! Why are state prisoners made to work and treated so very bad?"

"That, my dear, is a hard question to answer. You must ask the governor, for it is his doings."

"What! old Franklin? You might as well ask our old brindle cow for reasons as him. What an old *codger* for governor!"

"Hush! hush! my dear;—do you know you are talking treason? We shall never get another invitation to government house if you are heard making such remarks. He is her Majesty's representative."

"The Queen ought to know better than to send such a stupid old *granny* here."

"Silence! are you mad?"

I soon found that Mr. Gunn had not misrepresented the treatment of our party. We were obliged to conform to the most frivolous regulations, and work very hard from early dawn until dark. The superintendent was heard to boast that we performed twice as much labor as any other party on the island. Breaking and drawing stone and dirt in carts, for macadamizing, was the chief employment. Seldom was any thing but oaths and reproaches heard from the overseer; and those whose constitutions were broken, (and there were not a few such,) so as necessarily to diminish the amount of labor required to be performed, received a double portion of abuse. The rations were very scant, and complaints of intense hunger were general. Fortunately the shore of the Derwent was lined with shell-fish—principally cockles and muscles—and as the bell rang for turn out long before daylight, we were for a while in the habit of stealing down to the beach and gathering them. Although they were boiled

and devoured without any condiment, I certainly never ate any thing which tasted better. But our stolen marches to the beach were soon discovered and forbidden. "We were there for punishment and no such indulgence could be allowed." Soon after this, we preferred a complaint against Henry Baker, the convict clerk, for robbing us of our bread and meat. Although the evidence was sufficient to have convicted him of theft in any civilized country, we received a severe reprimand from Mr. Gunn for making false charges, and questioning *Mr. Baker's* integrity.

We likewise took the liberty of sending a joint petition to the "old granny," as Franklin was generally called, asking for better treatment. In a few days the old gentleman made his appearance, and delivered one of his *eloquent* speeches upon the wickedness of signing a *joint* petition, which was contrary to Van Dieman's Land rules. In future, if we petitioned, it must be done separately; but it would be far better not to do it at all. Three American vessels came in while we were there, but during their stay, two extra policemen were placed over us to prevent any communication.— One of the captains visited the station, accompanied, however, by a colonial magistrate, to act the spy. He showed sympathy for our sufferings in his looks, but not a word could he speak in private. Many were the plans formed for effecting an escape, but we were obliged to give them all up as impracticable, so closely were we guarded. Four of our number, however, determined to make a trial. They left in the dusk of the evening, and we heard no more of them for three weeks, when they were captured upon a desolate island a few miles from the main land. They took a boat, with the intention of following the coast north, crossing Bass straits, and landing in New Holland. They were, however, pursued, and their little boat wrecked upon the rocks. They had subsisted upon shell-fish the whole time, and two (Michael Morain and William Reynolds) were nearly starved to death when captured. The others (Horace Cooley and Jacob Paddock) were greatly debilitated. They were immediately tried and sentenced to perform two years hard labor at Port Arthur.

The party in general bore their misfortunes with manly fortitude. There were several aged men among us, who mostly set the younger an example worthy to be followed in the school of adversity. Elijah C. Woodman, of London, U. C., and Chauncey Sheldon, of Michigan, were the eldest. I shall never forget a little circumstance which occurred connected with the former. We had worked hard all day in the cold rain, and as usual were locked into our cheerless huts after the day's toil, to sleep in our wet clothing until the morrow should again call us to the performance of our cruel tasks. Some sat upon the forms, some in their berths, while others had covered themselves with their thin blanket and rug to court the warmth, sleep and rest which they so much needed. All were silent. Drooping heads and sad countenances indicated that the thoughts of the melancholy party were of bitter wrongs, or perchance of distant home and friends. Occasionally a heavy sigh might be heard, and anon a slight groan from the sick, (for there were always sick among us.) Suddenly Mr. Woodman sprang from his berth to the floor, and in a tone of voice that might have been heard a mile, struck up "*the hunters of Kentucky*." The effect was instantaneous. As if electrified, every man sprang to the floor; sick, blind and halt, joined in the chorus; some danced, others shouted, and all shook off the gloomy horrors of Van Dieman's Land.

About the first of May our party were ordered into the interior. This was doubtless to prevent escape from the island. "Lovely Banks" was the name of our new home. It was distant thirty-six miles from Hobart Town, on the road leading to Laurenston. There were no inhabitants living within two miles of the station, which stood in a beautiful valley surrounded by high hills of a red, sandy soil, and partially covered with "she oak" as it is commonly called. These oak forests were by far the most agreeable to the eye of any thing which I saw of the kind on the island. The hills upon which they grow are generally "sugar loaves," from two hundred to six hundred feet high, free from under brush, and adorned only with these beautiful trees, which

seldom obtain a height of more than forty feet, and diameter of one yard at the base of the trunk. Their large circular, ever-green tops however, vary from sixty to one hundred feet in circumference, and the landscape which they form, whether viewed from a distance or the base of the miniature mountains upon which they grow, can scarcely fail to excite the admiration of the beholder.

Mr. Gunn was kind enough to send an order to the superintendent (an Irishman, named Braberson,) appointing me clerk of the station. As this would relieve me from all hard labor, I felt, for the first time in many months, comparatively happy. The duty of the clerk was to muster the party morning and evening, issue the rations, keep the books, &c.; and I should thus be enabled to prevent our party from being robbed of the pittance allowed to keep us from starving. But, alas! the *evil genius* of the country ruled here. A trebly convicted felon occupied the situation when I arrived, between whom and the superintendent there appeared to be a peculiar affinity. In looking over the books I at once discovered that fraud had been practiced by these *harpies*, and, for my own safety, demanded that an inventory should be taken of the amount of stores, &c., on hand. This was refused, and after a few days spent in the office, Braberson told me he should retain Johnson two weeks, after which I could take his place. In the mean time he had written to town stating that I was not qualified for a clerk, and asking permission for Johnson to remain. This coming to my ears, I reported the whole circumstance to the visiting magistrate, in the presence of Braberson, and was taken aside and told to remain quiet for a few days, and my wrongs should be redressed; but the promise was not kept. The next day a brace of fine rabbits and fowls was sent with Mr. Braberson's compliments, to Major Ainsworth, the aforesaid gentleman, which of course made all *square*, as his worship had no objections against taking "*tip*." The superintendent, convict overseer and clerk now combined to render my life as wretched as possible. I was kept at the hardest work, and daily insulted and abused in every possible way. Several others who

had given offence to these "*powers that be*," (ordained, however, by his Satanic Majesty,) were nearly as fortunate as myself in this respect. But for the hope of effecting a general escape from the Island, I should certainly have braved the consequences of open rebellion to their hellish tyranny; but I resolved to "bide my time."

We had not been long at this station when James P. Williams, *alias* Steward, was sent to the hospital at New Norfolk, with sore eyes, where he soon died (as I since have been credibly informed) from ill treatment.

Many of our number were sick, some of whom were thrust into the cells for not working beyond their strength. We were allowed a pair of new shoes once in four months, but nearly six months had passed away and we still wore the old ones, and several were compelled to work bare-footed. One of these (Hiram Loop) refused to labor without shoes, but he only received several days confinement on bread and water for his presumption. The sick were often shamefully abused, and driven out to work in the cold rains. The *triangles* were erected, and we were threatened with a flogging; but we gave the superintendent and overseer to understand that this was going one step beyond the boundaries of endurance, and in case any attempt was made to flog one of our party the remainder would openly rebel. As we talked plain and decided, they took the hint, and we heard nothing more about the triangles. The first night after they were erected, one of our party carried them on his back over a mile to a small lagoon, into which he threw them, and where, doubtless, they remain at the present day.

Robert Marsh, whose constitution was sadly impaired, was subject to much persecution. He was one day employed in wheeling dirt, and complained of the barrow's being loaded too heavily. But the felon overseer, who had stolen a pair of boots from Mr. Marsh, of which he had been openly accused, was determined on revenge. Braberson, likewise held a grudge against the poor fellow, and when the circumstance was made known to him, he said the work was too light, and if it was not performed Marsh should be punished.

The barrow was loaded still more heavily and a stout, healthy English fellow who happened to be present was ordered to wheel it a few paces. He did so, and Braberson exclaimed, "If that man can wheel it you can: let me hear no more complaints, or you go to the cells." Accordingly poor Marsh had to wheel the heavy barrow the entire day. Not satisfied with this, when the party went into the station, (we never left off work till dark) a heavy bar of iron was purposely left behind, to bring which, Marsh and Stephen Wright were selected from their comrades and sent back, a distance of two miles. They arrived at the station about nine o'clock in the evening, as may be supposed, quite worn out; but we were all glad to hear that they had thrown it down upon a rock and divided it into two pieces. As it was done in the dark the overseer had no redress. The persecution against Marsh now became so severe that he was under the necessity of complaining to the magistrate. He ordered him to be examined by the doctor, who pronounced him to be an invalid, and incapable of performing any heavy labor. The overseer was severely reprimanded, and threatened with a lesson at Port Arthur for his tyranny. I relate this circumstance in order to "give the devil his due," for it was the only instance in which any of our party were fairly dealt by while I was with them. Circumstances of similar aggravation on the part of the superintendent and overseer were daily occurring.

June, July and August, are the winter months in Van Dieman's Land. Although the ground was seldom covered with snow for more than an hour at a time, the weather was severe, rain or snow generally falling throughout the day; and the nights were exceedingly cold. As if to increase our sufferings to the utmost possible extent, our clothing, of which we were now sadly in need, was withheld from us. More than twenty poor fellows were barefooted, and in the morning when the party went to their labor, BLOOD marked their foot-steps in the frost. Nearly all were half naked. More than half the party had but one shirt. Saturday afternoon was allowed for washing, mending, &c., on which oc-

casions these poor fellows might be seen in a state of more than half nudity, washing their shirts in cold water, and as there was no fire allowed in our huts, and we were prohibited from entering the cook or bake-house, it was often impossible to dry them. This indeed was not much of an object, as we were constantly exposed to the rain.

Sunday was hailed both as a day of rest and *feasting*, as there was no church in the vicinity; parsons were not at all troublesome, and we were left to ourselves to worship in our own way. The opossums were very thick in the surrounding bush, and we were in the habit of stealing away every Sunday to capture them. This was certainly an open desecration of that holy day, but let the reader remember that we were half starved, and that the flesh of this animal, although very coarse and unpalatable, was devoured with the utmost greediness. As at Sandy Bay with the shell-fish, so here, opossum catching was too great an indulgence for us, and we were prohibited from leaving the station.

The hardest work which we were made to perform was that of drawing stone in carts from the quarry to the road, a distance of nearly two miles. The road was uneven and half of the distance up hill. The carts, when loaded, would weigh at least a *ton*, the boxes being six feet long, four and a half feet wide and one and a half deep. Four to six persons were put to a cart and obliged to draw at least twelve loads each day. Being a *marked* man, I was kept at this delightful exercise the whole winter. After working in this manner in the cold rain and snow from daylight till dark, half naked and half starved, we were turned like so many cattle into our cheerless huts, without fire, and not half enough bedding, to sleep in our wet clothing till another day called us to toil and slavery. For seven weeks in succession my own clothing was not once dry; yet I was not troubled with a cold, or subject to any sickness. I was, however, greatly emaciated, and felt that I could not long endure such horrible treatment. Those of the party who were not ill, or broken in spirit, became desperate, and bushranging and death were talked of as preferable to longer endurance.

About the 20th of August we heard that there was an American whaler in town. We had made friends while at Sandy Bay, of three gentlemen in that vicinity, who promised to assist us in effecting an escape if practicable. Joseph Stewart and myself determined to take a trip to Town and see if something could not be done with the American captain in behalf of the whole party, proposing, if unsuccessful, to return and surrender to the authorities. Provisions sufficient to last us twelve days were contributed by our companions from their scanty allowance, as we resolved not to *rob* for a livelihood in our absence. Many of the party were anxious to share in this enterprise, but it was deemed advisable that only two should leave. We were in hopes that the captain might be prevailed upon to make arrangements for the reception of the whole party on board his vessel; to leave the harbor as if going to sea and return upon a given day to an uninhabited part of the coast designated upon a chart of the Island, where we could meet them in a body, by making a forced march in the night from our station, and thus bid adieu to Van Dieman's Land.

To deceive the authorities with reference to our intentions we left a letter where it would be found the following morning, which I trusted would likewise induce the government, even if we failed, to treat the party with more justice and moderation.*

* LOVELY BANKS ROAD STATION, August 29th, 1840.

To Major Ainsworth:

SIR,—Our treatment at this station has driven us to "take the bush," as the only chance of prolonging our lives. You, sir, are aware of the cruel tyranny to which we have been subjected, and we can but consider you, as visiting magistrate to the station, responsible for our own sufferings and those of our comrades.

We avail ourselves of the present occasion to inform you that our comrades whom we leave behind are rendered desperate by the abominable tyranny practiced upon them; and we can assure you that unless they are treated much better than they have yet been since their arrival in the colony, nearly all of them will soon follow our example. We do trust that some mercy will be shown them. You will oblige us by forwarding this letter to the Lieutenant Governor, in order that his attention may be called to the subject. He will find, if he takes the trouble to visit the party, that they are treated far worse than African slaves in any part of the world.

We have the honor to be, sir, your obedient servants,

L. W. MILLER,
JOSEPH STEWART.

CHAPTER XXIV.

The Author and Joseph Stewart abscond.—The Journey.—A Quandary.—The Surprise.—The Betrayal.—The Return.—The Mysterious Fountain.—The Surrender.

ON the evening of the 29th August, dressed in the costume of the prisoner, with our knapsacks upon our backs, we bade adieu to our companions, removed the flimsy barriers which British compassion had erected for the nightly comfort and protection of the Canadians, scaled the outer wall of the prison yard, and at the moment the watchman, an English felon, whose duty it was to prevent night-walking, sang out, at the distance of only a few yards, "All's well,"—were **FREE!** free from prison walls; free from British tyranny, for a season at least, and Hope whispered, falsely whispered, *forever*. Alas! alas! that sweet angel of mercy was luring us on to slavery, wretchedness and woe, incomparably greater than we had yet experienced. But the veil of the future hid these things from our view, and we saw only the brightness of the present. Many a "God bless you," many a prayer for the success of our mission by our comrades cheered us onward, and with stout hearts and bright anticipations, we took a farewell look at that home of slavery, plunged into the dark forests, and, with the Southern Cross for our guide, steered for the metropolis of the land of Nod. "I am *free!* *free!* *free!*" shouted my friend "Joe," as we descended, at no snail's pace, one of the ten thousand almost bottomless ravines which yawn between the hills and mountains of the island. "I am *free!*" I enclained with indescribable transport, and the huge rocks and trees of the "prison isle," as if inspired with that freedom which they

forever lost when Britain planted her bloody flag, that symbol of eternal slavery, upon their shores, caught the soul-stirring sounds and echoed forth "I am *free! free! free!*"

We traveled until early dawn, and then made our bed for the day under cover of a thick cluster of the wattle tree. The reappearance of darkness was the signal for renewing our journey. Carefully avoiding the habitations of men, we made the *bush* our highway, and the warm lairs of the kangaroo (as they sprang up and bounded away, measuring from twenty to thirty feet each leap,) our resting places. Climbing high hills, and descending dark and dangerous precipices, clinging to rocks and bushes to prevent a plunge into the abyss below, our progress was neither swift nor uniform. Occasionally we found the under brush and high grass so thick in the valleys as almost to defy our efforts to advance; and often spent an hour of great exertion in gaining one fourth of a mile.

"We are not far from Bridgewater," said *Joe*, as we sat upon a log partaking of a dish of that delicious beverage "*tea*," a half pound of which he had earned at the *Lovely Banks*, by doing five dollars worth of tailoring for *Mister Braberson*, (Joe was a tailor,) "and I recollect seeing a large cluster of underbrush near the public road, on our journey up to the station, which would make a capital hiding place through the day. Suppose we take the open country, we shall reach it before daylight and be ready to cross the *Derwent* early in the evening."

"Are you certain," I replied, "of what you say? I did not notice any underbrush near the place."

"Oh, yes; I can not be mistaken."

Broad daylight found us at the designated spot, but behold! there were no bushes to secure us from the eye of our fellow men. We were in the open country, in a thickly settled neighborhood, and the columns of smoke which the chimneys began to send forth, convinced us that we had no time to lose in becoming invisible. On the right-hand side of the road was a high hill, covered with the oak, the summit of which might possibly afford a retreat; and toward it

we hastily wended our way. A mass of rocks, and the absence of any thing which could tempt man to frequent the place, betokened security; and without fear of being disturbed, we made our beds and were soon dreaming of native land and liberty.

About 11 o'clock, A. M., I was awakened, apparently, by a strange presentiment of coming evil. Raising my head, I beheld a large dog near our feet, and a few seconds discovered to me his master, a middle aged gentleman of interesting appearance, making directly toward us. He seemed as much surprised as I did chagrin, at seeing us, and hastily exclaimed, "What! what's this? ah! I see; you are bushrangers." Poor *Joe*, who until now was talking broken sentences in his sleep, such as, "I say, Tom King, this is a monstrous great load, you're making us draw! we can't get through that mud-hole with it! There, there; I knew it would be so—here we are stuck fast in the mud. I wish the Queen had to pull it out. Pull! pull! altogether, lads!" &c., &c.—now opened his eyes long enough to become conscious that we were in a pretty *quandary*, gave a very ominous groan, turned his head in an opposite direction, and left me to entertain our unwelcome visitor.

"You have stumbled upon a *fact*, my dear sir," I replied; "we *are* bushrangers. May I take the liberty to inquire who you are?"

"Oh, certainly; my name is ——, and I am a district constable."

"I do not wish to insult you, sir, but you will, I trust, pardon me for saying I would rather have seen the face of his Satanic Majesty than that of any district constable on the island. You are most unwelcome to our rude habitation, but please be seated; here are rocks—we can offer you nothing better."

"Oh, you are over polite to a stranger! But I must decline making myself at home until I learn something further of your circumstances and intentions."

"I have not the least objection, sir, to giving you all reasonable information. My own name is Miller—I am a

citizen of the United States, and until little more than a day since was a British slave. Now, however, I call myself a free man, while you term me a bushranger—in other words, an outlaw; but we will not quarrel about terms. Allow me now to introduce my friend Mr. Joseph Stewart, a real Jonathan, like myself. Mr. Stewart, please to sit up and make yourself agreeable.”

Joe remained motionless, and only ejaculated a faint “ahem!”

“Your friend,” said our new acquaintance, “seems rather unsociable; but allow me to inquire if you are not the two Canadian prisoners who absconded from the Lovely Banks, night before last?”

“We are the same.”

“Indeed! I am sorry, for it is, as you must know, my duty to apprehend you. How could you have been so foolish as to abscond? Your free pardons are expected to arrive every day; there is no possibility of escaping from the island unless you have money and friends, and if you live in the bush, robbing for a livelihood, you must soon come to the gallows. But I will not believe that you Canadians would rob. I have heard an excellent report of your characters, and all the respectable inhabitants in the colony are your friends.”

“As for free pardons, we have waited a long time for them, and I fear may wait until we are all murdered under our inhuman treatment;” and I told him of the horrors to which we had been subjected. He expressed great surprise, and much sympathy for our party; and assured me that our wrongs were not generally known or they would have been redressed.

“But,” he continued, “it is most fortunate for you that I have fallen in with you to-day. You have not yet been absent two days, and therefore will not be punished as absconders. I have influence with the magistrate here, and will insure you a mere nominal punishment, and this indiscretion will be forgotten when your pardons arrive. Come, go with me at once; you will never be sorry for it, and I will

even state to the magistrate that you voluntarily surrendered yourselves to me."

"You are very kind, sir, but we can not go with you. We have taken the bush for the purpose of escaping from the island, and until we have had a fair trial, and failed, shall not surrender, unless absolutely compelled to do so."

"If there was any possibility of your succeeding, I should indeed be sorry to interrupt you, knowing as I do the nature of your crime, and that you have been badly treated here. But of what am I talking? I am bound by my oath to apprehend you, and must do so."

My dear sir, you forget that we are two to one. As for being taken, rely upon it we *shall not*. Unless you promise upon your honor as a gentleman not to betray us, you must remain where you are until evening."

"As for that, I have only to call for assistance, and in fifteen minutes a dozen persons will be here; it is impossible for you to escape."

"I trust you will allow us to pass without molestation; I shall be very sorry to use harsh measures, but if you attempt to escape or call for help, we shall certainly make you repent it."

"Come!—what's the use in talking? You must be hungry; go with me to my house and get a cup of tea, after which I will go with you to the magistrate."

"We are not hungry," and I opened our knapsack, showed him our stock of provisions, and explained the manner in which they came into our possession. "These," I continued, "will last us until we have either succeeded or failed in our enterprise. If the latter, we shall surrender to the authorities, and as we are about committing no greater crime than that of escaping from slavery, I feel confident you will allow us to pass."

"But you will be obliged to steal a boat in order to cross the river."

"You forget, sir, that we are Americans, and can construct a raft."

"Raft! pray what is a raft? I never heard such a word used before."

I explained how a raft might be constructed from dry timber, to answer the desired purpose. He seemed quite astonished, and exclaimed,—“Well, well, I have heard much of Yankee ingenuity, but this is something new. You Americans can do any thing. But have you really any hope of making your escape should I allow you to pass? which you know I cannot do on account of my oath.”

“We have friends who have promised to assist us.”

“Where are they, and what are their names?”

“Do you think we shall betray them? We know better than to use our friends thus.”

“I am glad to see that you do. Never betray your friends.”

“Now, sir, you can look at these papers, which will convince you that we are at least men of principle, even if we are prisoners. We will pledge ourselves, if you allow us to pass unmolested, and we succeed in reaching our homes, to send you one hundred pounds sterling; if we fail, and are obliged to surrender ourselves, you will get nothing but our eternal gratitude.”

He looked over some certificates of character, which we carried with us, and returned them, saying, “They are quite satisfactory, and I should feel no hesitation in lending you the sum of money you offer me as a bribe, if you required it and there was a chance of your succeeding; but,” and he eyed me keenly, “do you see any thing in my countenance which encourages you to think I would break my solemn oath for money? No, no, sir; I am above bribery. I came to this colony several years since, independently rich. I have five thousand acres of good land, and all the money which I care about. I accepted the office which I hold, not because of the salary, which is of no consequence to me, but to maintain good order in the neighborhood.”

“I rejoice, my dear sir, to find that you are a gentleman of honorable principles, and this encourages me to hope you will allow us to pass.”

“I have already told you that I am bound by my oath to stop you. Nothing can tempt me to break my oath.”

Recollecting that I had a letter from a dear sister, received

while I was in London, in my portfolio, as a last resort I handed it to him, requesting that he would read it.* He did so, but had only read a few moments when I saw a large tear trickle down his manly cheek. Another, and another followed, and soon he was sobbing like a little child. Stewart, hearing the sounds, arose from the bed where he was reclining, and plead most eloquently our now brightening cause.

"Are you a father," said Joe, "and would you hinder us from going home to gladden the hearts of parents who have suffered years of dreadful misery on account of the absence of their children? Have you a mother whom you love; and will you not have compassion on ours? Have you a sister, such a sister as penned that letter, and can you withhold this brother, who has been guilty of no crime except fighting in the cause of liberty, from returning to the home of his childhood to gladden her heart? No, no! I will not believe that you will think of offering any hindrance to our journey. Is it such men as we are whom your oath requires you to apprehend? Is it not rather men who rob and plunder the peaceful inhabitants of the island? Why, it would be a crime! a crime

*STOCKTON, March 4th, 1839.

DEAR, DEAR LINUS, — With sensations which I shall not attempt to describe, I have taken my pen to address a near and dear, yet far distant brother. Your letter by the "Great Western" was received on Friday last. Till then, we had not received a line from you since November last. The news we then received, was to us not only very distressing, but wholly unexpected. We had fondly hoped and believed that you would soon be restored to liberty and to us; but, alas! time has shown us how little we knew of futurity, and of the men, too, in whose power you were placed. We learned from the papers that the prisoners, under sentence of transportation, had arrived at Quebec, and had embarked for Liverpool, but this was afterwards contradicted, so that we were left in ignorance of your fate. William wrote a letter to you directing it to the care of the high sheriff of Midland District, requesting him to forward it to you, and earnestly entreating him to write and give us some information respecting your fate, but the request has been treated with neglect. I learn by reading the papers that he has business which he probably considers of more importance. If he has any feelings of humanity, and I am inclined to believe he has, his situation must indeed be pitiable, for he occupies a station where he is not only familiarized with scenes of blood and horror, but is obliged to be an instrument in the perpetration of them. But enough of this.

A few weeks since, we saw an account of the arrival of the Canadian prisoners at Liverpool. A list of their names was given, so that we were no longer in suspense respecting your destiny; but the sweet hope that our Linus would yet be liberated, and that his presence would once more gladden our hearts, seemed entirely to forsake us. Mother's tears seemed to pour forth afresh, and with a sigh, she said we should

against our suffering friends; a crime against humanity and against heaven to stop us. Would you, oh! would you send us back to the horrid slavery from which we have just escaped? No, I will not believe it. I did not know before that there was a single inhabitant of this island, this land of crime and suffering, who has a heart to feel for another's woe, but I find there is *one*, and I thank God for it."

The stranger arose and offering a hand to each of us, exclaimed,—

"God bless you, my young friends, and prosper you in your undertaking. I am a son, a father and a brother, and that letter has brought me to a sense of my duty. You, Mr. Stewart, have said truly; my oath of office is not binding against such men as you. I would not hinder you from going home to such friends for all the world. I could not sleep nights with such a load upon my conscience. Should you reach home in safety, remember me to that sister and your aged parents, and tell them there is a man, yes, not one,

never see Linus more. Our hearts were sad. Fancy presented you to our imagination in all the forms of suffering and distress; yet we could not reach forth our hands and administer to your wants. Yet amidst all our sorrows, we did not, I trust, forget that there was one kind friend, whose merciful hand is stretched out still. We did not forget that a just God "rules and reigns in the armies of heaven, and does His pleasure among the inhabitants of the earth."

About two weeks since, news came in the "*Fredonia Censor*," that twelve of the Canadian prisoners had been taken from Liverpool to London, by Mr. Roebuck, under a writ of habeas corpus, for the purpose of having tested before the Court of Queen's Bench, the legality of their sentence of transportation. It also added that an opinion prevailed that the prisoners would be acquitted. O, Linus! should I attempt it I could not describe to you the emotions of my heart on reading this joyful intelligence. I had forgotten to tell you that the names of the prisoners were given, and yours was among the number. We heard nothing more until we received your letter, which created in our hearts a mixture of joy and sadness—of hope and fear. Whether the efforts of your kind friends in England prove successful or otherwise, I trust we shall ever retain a grateful recollection of their kindness and benevolence in our hearts. May God, who delights in those who show mercy to the unfortunate, reward and bless them.

I can not relinquish the sweet hope of again seeing you, and enjoying your society, but if God has otherwise determined, my prayer is, that He will be better unto you, than father or mother or brother or sister. * * * * *

And now, Linus, if you were only here, I think we should all be very happy. Oh, never, never forget us, nor how much we wish to see you. If you are not liberated at present, I hope and believe that you will be at some future time,—if so, do not wait a day, but hasten home and gladden our hearts. Keep up good courage, Linus, and continue to trust in God. May you yet be prosperous and happy, is the sincere wish and prayer of your sister,

ELVIRA E. MILLER.

but thousands, in this home of crime, who feel for the woes of the unfortunate. Should you fail, I have no fear that you will betray me. You can remain here until night, and then go on your way. This place is quite safe. I have never seen any body here except yourselves, during the whole period that I have owned this land, and it is at least eight years since I visited this summit before. Why I came here to-day I know not, but being out for a walk, my dog came in this direction, and I mechanically followed him. I trust I have not made you so unpleasant a visit after all, as his Satanic Majesty might have done, even though I am a district constable. And now young friends, farewell! and may God Almighty guide you in safety to your homes."

Thus we parted. Reader, he was a pattern which millions, who call themselves christians, and boast of their good deeds, might copy. Such a man might say with propriety, in the language of JOB, "The blessing of him that was ready to perish came upon me, and I caused the widow's heart to sing for joy."

On the evening of September 2d we arrived at Sandy Bay. While our party was stationed there, I had formed an acquaintance with an aged man, whose son was a Publican, and one of those who had promised to assist us in effecting an escape. Knowing that his house was the resort of constables, I felt reluctant to trust myself on the premises, but wrote a letter, asking Mr. — to see the American captain, and if possible induce him to grant us an interview.

Repairing to the house of the father, I asked him to carry the letter and deliver it to his son. He had formerly professed much friendship and sympathy for our party, and I did not hesitate to apply to him for this favor. He was greatly agitated when he saw me, and begged me to leave, saying that I should get himself and son into trouble. [All persons were forbidden by law to harbor or assist any prisoner in escaping from the island, under a penalty of five hundred pounds.] I assured him that our presence there was unknown to any person except himself, and if any difficulty arose, it could only be through his indiscretion. After much

urging, he consented to carry the letter to his son's house, which was only a few rods distant. I followed him to the road, and anxiously awaited the issue, but was not kept long in suspense; for in less than a minute after he entered the door, six or seven constables rushed out, followed by the old man, who sang out, "Now, young man, take care of yourself; the constables are after you!" "*You old reprobate!*" I exclaimed, and fled. The pursuit was a hot one, but I soon distanced them, proving an old saying of mine, "there is great virtue in a good pair of legs." Turning in an opposite direction, I soon rejoined my comrade, whom I had left behind in charge of our baggage. In an hour's time we were snugly ensconced under a stone bridge, three miles below Sandy Bay, where we had nothing to do but mourn our hard fate. All our hopes were thus suddenly crushed; for it would be madness to think of prosecuting our designs, when, within a few hours, hundreds would be on the lookout to catch or hunt us down like wild beasts of the forest. To attempt any description of our feelings would be useless, and I leave the reader to fancy our misery. Slavery worse than death was before us, and human blood-hounds were eagerly "snuffing up their prey," to obtain the reward offered for our apprehension. Our comrades, too; what would become of them?

We remained in our snug retreat the following day, during which time more than thirty constables crossed the bridge in search of us. If they had only looked in the right place, doubtless they would have found us! At night we commenced a retreat, with the intention of returning to the Lovely Banks and surrendering to the authorities.

On the third day a circumstance occurred which borders on the marvellous, the simple unadorned facts of which I shall relate, and leave the reader to draw his own conclusions: premising, however, that I am no believer in enchantment.

We were traveling along the side, and near the top of the ridge of mountains which runs from Hobart Town in a northerly direction along the river Derwent, and were, I should judge, about twelve miles from the former, and four miles

from the latter. As we were far from human habitations, we ventured to travel during the day, which was intensely warm, although old Wellington, whose head reached above the clouds, was clothed with snow. Not a breath of wind, nor a sound, save that of our own footsteps, and their echo, broke the solemn stillness which reigned in that desolate region. At length we both became exceedingly thirsty, but could find no cool stream of water in which to cool our parched tongues. Once, indeed, we descended a deep ravine, in the bottom of which the sun never shone. The tears of old Night were still hanging upon the underbrush in the form of dew-drops, which we eagerly kissed away, and never in my life did I drink any thing which tasted half so delicious. We were nearly fainting, when to our great joy we discovered a beautiful fountain of water running from the base of a ledge of rocks, nearly one hundred feet perpendicular. After making a cup of tea and remaining at the spring two or three hours, we proceeded on our way.

At the distance of about half a mile from the spring, I detected myself casting my eyes around in search of a *third person*. I became conscious, at the same instant, that I had been under the influence of a kind of spell, if I may make use of the word, from the time we arrived at the spring, until that moment. Reason told me it must have been an illusion; yet the impression that a stranger had been with us at the fountain, had taken part in our conversation, reclined with us upon the bank of the stream, partaken of our refreshments, and left the place in our company, was as strong upon my mind, and seemed as much a reality, as any common-place event in my existence. I at once came to the conclusion that the physical and mental sufferings which I had endured since absconding, had produced a partial derangement of mind; and resolved not to mention the subject to my companion. Two minutes had not elapsed from the time the illusion under which I had been laboring was broken, when I observed Mr. Stuart, who was a few paces in advance, pause—look around, as if in quest of some person besides myself, stare at me, pull off his cap and scratch

his forehead, (a custom with him when greatly puzzled,) and finally set down upon a fallen tree which lay near, with an expression of perfect bewilderment upon his countenance. I took a seat by his side, and the following dialogue took place :

“ What is the matter, Joe ? ”

“ Oh ! nothing of consequence. But — have you seen any thing in my conduct of late which would lead you to suppose me *cranky* ? ” (deranged.)

“ Nothing, except what has occurred within a few moments. But why do you ask such a question ? ”

“ Because, I begin to think my head *is* a little cracked. ”

Joseph Stewart, a Pennsylvanian by birth, and a hero at the battle of Prescott, was a young man, of superior intellect, extensive information, great decision of character, good principles, and above all, generous and amiable disposition. He possessed all the requisites of a pleasant companion and trustworthy friend, and such, I am happy to say, he has been to me for years. My own temperament was decidedly sanguine, his choleric, and I knew that the effect of gas, or any known substance impregnated, would be different upon him than upon myself. Judging from his manner that, like myself, he had just recovered from some mysterious influence, I felt some curiosity to learn the precise impressions he had experienced, and therefore continued to question him.

“ What reason have you for so novel an opinion ? ”

“ Oh ! I am not going to tell you to be laughed at ; but, it is very strange ! ”

“ What is strange ? Explain yourself, Joe, and I promise, that however ridiculous it may be, I will not laugh at you. ”

“ Promise me first never to mention the subject to a third party without my permission. They would certainly think me *cranky*, and I believe that I am. ”

I gave the desired promise, and was surprised to find that he had been the subject of precisely the same impressions as myself. He was no less surprised to hear me acknowledge, after he had finished his account of the affair, that I

had been duped in the same manner. From our being absconders, the appearance of a stranger, even at a distance, would, under ordinary circumstances, have caused us alarm, but it was remarkable that we both considered the mysterious person, while with us, a companion, who belonged to our party, and with us as a matter of course ; yet neither of us had taken particular notice of his countenance so as to be able to describe it ; but both agreed that he was of common stature, dressed in black, wore a common straight bodied coat, and was a very pleasant and agreeable companion. Nor could we tell the subject of our own or the stranger's conversation, but it seemed that we had talked, laughed, related anecdotes, &c., and that he bore us company from the spring nearly to the place where we were sitting.

As we were in no particular haste to throw ourselves into the arms of our cruel enemies, we resolved to spend the evening where we were, and return to the fountain on the morrow for the express purpose of solving the mystery.—Neither of us wished to go away without ascertaining, if possible, the cause of so strange an effect. Stewart had likewise left a silk handkerchief upon the bank where we had reclined, and to persons in our circumstances such a trifle was of some value. A large cavity in the side of the mountain, was our habitation that night, and in the morning, refreshed and invigorated by our rest, we retraced our steps to the spring, determined to guard against any illusion, and if possible discover the mystery.

When we came in sight of the place I exclaimed, "There it is Joe ; mind now and keep your eyes open."

"Oh, never mind me," he replied, "the devil himself shan't crowd into our company to-day without my knowing something of his business."

We remained about three hours at the fountain, made and partook of some tea, &c., and departed ; but when about as far from the spring as on the previous day, I again caught myself looking about for our fascinating companion ; and in less than thirty seconds Joe likewise broke his spell, and began to swear that old *Nick* had outwitted him again. Both

of us had forgotten the business that brought us to the spring, the moment we arrived there. Our strange companion was again with us, and our impressions were the same as before.

In taking leave of this subject, I would remark to my young friends who may chance to peruse these pages, that in the days of superstition, which have happily passed away, it is to be hoped forever, the effects which I have here described would, in all probability, have been ascribed to enchantment; but that every effect has a natural cause adequate to produce it, is an axiom which can admit of no doubt in the present enlightened age. A repetition of visits to the spring, and chemical analysis of its waters, would doubtless have explained the mystery.

On the 11th September we voluntarily surrendered to the authorities at Bagdad, and felt happy in being again admitted within the walls of a prison. From the time of our betrayal at Sandy Bay, we had been most wretched. All hope of escape was at an end, and the dark future was frowning upon us. Knowing that we were hunted like wild beasts of the forest by our enemies, we never felt a moment's security; and the reflection that we were outlaws, prohibited the habitations of our fellow men, without a place where we could lay our heads in safety, to rest our wearied limbs, rendered even a prison a desirable asylum.

CHAPTER XXV.

The Trial.—The Treadmill.—An Outrage.—Tom Hewit.—Interview with Mr. Gunn.—Horrid Treatment on board the Brig Isabella—Tasman's Peninsula and Port Arthur.—The Commandant.—The Convict Overseer and Carrying Gang.—Indescribable Horrors.—Stewart in the Cells.

A FEW days after our surrender, we were removed to Green Ponds for trial. We were taken into the presence of *Major Ainsworth*, and a convict clerk. The latter arose upon our entrance, and read as follows :

“Linus Wilson Miller, and Joseph Stewart, you, and each of you, stand charged with being illegally absent from your party twelve days.”

Major Ainsworth.—“Do you plead guilty, or not guilty, to the charge ?”

“Guilty.”

Major Ainsworth.—“I have it in my power to sentence you to perform two years' hard labor at Port Arthur, *and I shall do so.*”

I attempted to speak, but the *British magistrate* exclaimed, “I will not hear a single word.”

This, reader, was a specimen of *summary justice* in the land of Nod.

We were now chained and handcuffed, and had the pleasure of marching to town in charge of a constable, where we were thrust into the tread-mill mentioned in a preceding chapter. There were about one hundred persons in this establishment, mostly convicts, but freemen were sent there by the police magistrate of the town, for drunkenness, &c. An immense wheel, about thirty feet in diameter

and sixty feet in length, was kept in constant motion fourteen hours of the twenty-four, by thirty prisoners. Every four minutes, one of the men descended from the wheel at one end, while another mounted it at the other; each man upon the wheel thus periodically shifting two feet towards the place of descent, which was reached in two hours. All who were too poor to purchase exemption from the overseer, were obliged to ascend the wheel in turn, and perform the novel, but very hard labor, of stepping from slat to slat (which were fifteen inches apart,) as it turned upon its axis. Stewart and I, owing to the hardships and privations we had lately experienced, were very weak, and being *poverty stricken*, were of course obliged "to tread out the corn," as it was significantly termed; and, but for the privilege of changing, (giving each other a "spell," when half way through,) could not have accomplished our tasks. Hard as the trials of the day were, those of the night were still worse. The prisoners under sentence for Port Arthur were locked into a sleeping ward by themselves, which was literally alive with vermin of every description. Sleep was out of the question, until one became so perfectly exhausted as to be able to slumber upon a bed of *thorns*. During the four weeks which we spent here, I think I did not sleep over two hours each night. The number of inmates was daily increasing, and the scenes enacted by these wretched men, during the hours of darkness, were of the most revolting and diabolical character; too dark to be written—too dreadful to be thought of! I will relate only one instance of a practice of almost nightly occurrence, which was, from its comparatively mild character, deemed a trifle in the chapter of outrages usually perpetrated. A new hand had come in during the day, apparently "flush" with money. Indeed he had foolishly exposed a well-filled purse, which he had contrived (probably by *tip*) to smuggle in. The stranger occupied a berth adjoining my own, and was soon asleep. About two o'clock in the morning, I likewise became unconscious of surrounding evil, from which I was awakened by the horrid cry of "murder! murder! murder!" proceed-

ing from a victim close by my side. In a moment he was drawn from his bed into the middle of the floor, when violent struggles and fearful cries followed, but the latter soon subsided to groans, he having been gagged. Some persons now commenced overhauling the vacant bed, while others tore his clothes in pieces as if in search of plunder. I should judge about ten minutes had elapsed after the first cry, when some one exclaimed, "I have it;—let the bloody b——r go!" and a scrambling for berths by the perpetrators of the outrage took place. The sufferer, however, lay some time on the floor, unable to rise; and fearing he might be actually murdered, I groped my way to him in the dark and offered assistance. Expressing sympathy for his sufferings, and indignation at the outrage, I felt a hand upon my shoulder, and a voice whispered in my ear, "*If you say one word about this affair, we'll cut your bloody heart out to-morrow night!*" In the morning the poor fellow's face and hands were covered with blood, and his mouth and neck so badly swollen that he could eat nothing for three days after.—The linings of his trousers, waistcoat and jacket, were gone, and all his money. This same fellow, however, a few days afterwards, joined the gang who had robbed him, and assisted in serving others in the same way.

We had been in the mill but a few days, when one morning the door opened, and Tom Hewit, our former overseer at Sandy Bay, came sneaking in. He had been on a drunken spree, and was sent here to pay the penalty by *treading out corn*, seven days. "Well met, Tom Hewit," exclaimed my friend Joe, but Tom was ashamed to recognize old acquaintances, and walked away to the other end of the ward, with a look of deep mortification. In addition to his wanton cruelty to poor Curtiss, he had abused me much, but now he was reduced, for a time at least, to the same glorious level with one whom he had wronged; and was, apparently, ashamed to look me in the face. I saw him offer a crown to the overseer to purchase exemption from labor; but that worthy functionary refused it with scorn, exclaiming, "No, no! Tom Hewit, you have been a hard overseer. I

have heard that you caused the death of one of the Canadians, by compelling him to work when sick, and there are two of that party here now, whom you abused; they tread the wheel, and you shall do the same. No! no! Tom Hewit, I want none of your money!" and so he had to mount the wheel. He was a large, stout man, weighing upwards of two hundred, which made the work doubly hard to him; and, as the story of his conduct towards the Canadians, had gone the rounds, he could not even hire any one to change with him—give him a spell. "He who shows no mercy, must not expect any," was the usual reply to his solicitations. Three days had he taken his turn upon the wheel, and was fast losing flesh. The fourth was unusually warm, and when he got half way through the wheel, he was dripping wet with perspiration, and appeared quite overcome with the heat and fatigue. Many eyes were upon him, and it was generally believed that he would be unable to go through. "It serves him right, and he'll learn how to treat his men after this," said the English prisoners. The evil spirit within my breast responded "*amen*" to this; but a better angel whispered, "Love your enemies; take a christian's revenge." I walked up to the wheel and slightly pinching his leg to attract attention, exclaimed, "Mr. Hewit, you appear to be fatigued; come down, and I will relieve you." He did so without hesitation, and when I descended, stood ready to offer me his hand, while tears streamed from his eyes. He was about to speak, but I interrupted him, saying, "I know what you would say; but let it pass: you are freely forgiven on my part." "Oh," he exclaimed, "this is too much; but I richly deserve it all. If you had struck, kicked or even spit upon me, I would have borne it in silence, for I knew I merited such treatment at your hands, but I was not prepared for this. But I will make atonement for the past while I live. I will never ill-treat my men again." The next day an English felon was about dealing me a blow for having accidentally trodden upon his "sore foot," but Tom Hewit stepped up, and shaking his huge fist in the fel-

low's face, exclaimed, "Touch a hair of his head if you dare! I would *die* fighting for that man."

On the 20th October, a vessel arrived from Port Arthur to convey thither the prisoners under sentence. I asked permission to see Mr. Gunn before we embarked, which was granted. When I stood before him, (doubly ironed and handcuffed) he ordered his clerks to leave the office.

"Well, Miller," said he, in a tone which sounded kind, "what do you want?"

"From what I hear of Port Arthur, I fear that Stewart and myself will neither of us live to return. We are already greatly emaciated; and how we can bear and live under greater hardships, Heaven only knows. But as you have professed friendship for me, I take the liberty to request that in case I perish there you will write to my father, and break the subject to him in as cautious a manner as possible. You are yourself a father; and I need not say more. Do not think, however, sir, from my making this request, that my heart is faint or my spirit cowardly. If I sink under my sufferings, it will not be from either of these causes, but a want of strength to bear them. I shall struggle to the last, and the consciousness of receiving undeserved punishment, will at least sweeten the bitter cup. I likewise wish to say to you that I consider we have been most unjustly dealt by. The English prisoners are seldom, if ever, sent to Port Arthur, for the first offense. I have known many instances, during the few months I have been in the colony, in which for the third, fourth, and even sixth attempt to escape from the island by prisoners of very bad character, who have been tried for various offenses perhaps twenty times, no heavier punishment than fourteen days' solitary confinement has been inflicted. Now you have not a scratch of the pen on your books against either Stewart or myself, except this one offense. We were only absent twelve days, during which time we committed no depredations whatever upon private property—which can not be said of English prisoners when they abscond—and we voluntarily surrendered ourselves at Bagdad. Yet without being allowed to say a single word in

our defense, we have been sentenced to two years' hard labor at Port Arthur. This is the heaviest penalty known to the law for our offense, and I must say I think it very hard and unjust."

Mr. Gunn.—"You might have been tried under the '*black act*,' as it is called, and hung for breaking out of your hut."

"Has any prisoner ever been tried under that law, a law which was passed nearly twenty years ago, a law in which the penalty was so disproportionate to the offense that even Colonel Arthur lacked the hardihood to enforce it?"

Mr. Gunn.—"But it has never been repealed, and you *might* have been tried under it. The government of this colony had the power to do so."

"Am I to understand that you would justify the government in hanging a man for that offense?"

Mr. Gunn.—"By no means; I think it would be very wicked to do so. But you might have been tried for *felony*, and sentenced to transportation for fourteen years, for stealing government property. You took each a blanket, tin pannakin, and all the clothing on your backs."

"As for the clothing on our backs, my dear sir, you would have found some difficulty in defining its value, and as we had been due for new clothing two months when we left, you would have made but a lame case out of our old rags. As for the blankets and pannakins, we certainly took them with us, but they were articles served to us when we landed on the island, and we were told that they were ours, that we must make them last two years, and that we were accountable for their safe custody. Now, sir, when we surrendered, I called the district constable and delivered those very articles to him in the presence of witnesses. Methinks the government of this colony would have engaged in small business in trying to make out a case of felony from this."

Mr. Gunn.—"Well, well, so they would. And now we have talked the matter over a little, I will speak my own sentiments on the subject without reserve. Had I tried you, I should not have dreamed of sending you to Port Arthur. I have been a magistrate of this colony nearly twenty years,

during which period I have never known so hard a case as yours. I felt when I heard of your sentence, that it was very distressing, and much regretted that you did not surrender yourselves here in order that I could have tried you.—Why Major Ainsworth was so severe, I can not imagine. I can not, however, interfere at present with the sentence which he has passed upon you; but when one half of it has expired, if you will petition his Excellency for the remission of the remainder, and forward the petition to me, I will see that you are removed. I would do more than this, if I could, but it is out of my power. You must do the best you can at Port Arthur until then, when, if your conduct remains as good as heretofore, I will take care that you do not suffer in this way again. Be assured you have my deepest sympathies, and depend upon my friendship, let what will occur. I shall certainly write to your father, if necessary, as you desire; but I trust there will be no occasion for it. Tell your comrade that I deeply sympathise with him, and will not fail, upon his return to town, to place him in some situation where he will be comfortable so long as he remains on the island. Take care of yourselves, and do not forget to petition.”

Our sufferings on board the brig “Isabella,” during the passage to Port Arthur, were ten-fold greater than we had before experienced. The space between decks was not four feet in depth, and could not have exceeded six feet by ten; yet, into this narrow hole, forty-six prisoners were crowded, all of whom were doubly ironed, and hand-cuffed in pairs. Only about one-fourth of the number could enjoy the luxury of sitting upon the floor at once, for want of room, and the remainder, be it remembered, could not stand upright, but yet were obliged to support themselves upon their feet, and lean forward, at the same time clinging, with their manacled hands, to their companions. In short, all were literally wedged in, and when the vessel pitched and careened from side to side, we were thrown into heaps upon the floor; the wrenching of the irons upon our limbs producing the most excruciating pains and torture, and the weight of the uppermost crushing those beneath, half to death. The most hor-

rid oaths and imprecations mingled with the cries and groans of the poor wretches. Nearly all were sea-sick, and the deck was literally a pool of nauseous matter, produced by vomiting. Every man was wet to the skin with it, and the stench was intolerable. The only air which we breathed was admitted through a hatchway about three feet square, and those most remote from this opening were nearly suffocated. "Water! water! for God's sake, some water!" was constantly vociferated by a dozen voices at a time; but the monsters who had charge of us would only hand down a tin pannakin full, (less than a pint,) at stated intervals. Many fainted, but it was with the greatest difficulty that they were dragged to the hatchway in order that a little fresh air might save their lives. At the end of thirty-six hours we reached Port Arthur, in a state of misery which language cannot describe.

It is a subject which can excite no surprise to the reader, that penal settlements should be formed in convict colonies, where those who violate colonial laws, and are found to be incorrigible offenders, should be sent for additional punishment. Such a settlement was established on Tasman's Peninsula, in the year 1830, by Col. (now Sir George) Arthur, after whom it was named. This Peninsula lies on the south-east side of the island, distant from Hobart Town fifty miles, and contains, I should judge, upwards of two hundred square miles. Its coast is like that of the main land, mostly iron-bound and very irregular, but forms several harbors, the best of which is called Port Arthur, and lies several miles inland. Its surface is marked with high hills, several of which are termed mountains. Mount Arthur, Mount Communication, and Brown Mountain, are the most important. The former lies within two miles of the settlement, and is about 1500 feet high. Port Arthur, upon the western side of which the settlement stands, is a beautiful and spacious bay, containing sufficient anchorage ground for a large fleet to ride in safety upon its smooth surface; but the channel through which it is approached, is somewhat intricate and dangerous. Nature has done her part in ren-

dering it one of the most pleasant and romantic places in that quarter of the globe ; but *man* has converted it into a home of woe, sin and shame. The dreadful scenes enacted here despoil nature of all her loveliness, and stamp gloominess, despair and death, upon every object. The settlement, when viewed from the harbor, has the appearance of a considerable village. The officers' quarters, (which are good buildings,) the military barracks, large stone hospital, &c., cover the side of a considerable hill, fronting the bay. To the right are the prisoners' barracks, enclosing nearly two acres of land, and surrounded by a wooden barricade ; while still farther on are seen the church and parsonage ; a beautiful alley, formed of choice trees, leading to the former ; and its steeple towering above surrounding objects. A very large brick building, four stories high, consisting of a mill and commissariat store-house, offices, &c., stands on an embankment, within a few rods of the wharf. Upon the northern side is the dock-yard, &c., where some fine vessels have been built by the prisoners. I saw, during my stay here, two beautiful vessels launched ; the first, the barque "Lady Franklin," of 350 tons, and the other a schooner of 120 tons.

On the morning of October 22d, we were landed at Port Arthur, and marched to the store-house, where our chains were taken off, and a suit of new clothing served to each man, consisting of a sheep-skin cap, striped shirt, jacket, waistcoat, and shoes. These were the only articles of clothing allowed to be worn. The suit was what is termed in the land of Nod, "magpie ;" one half being black, and the other yellow, arranged so that the front of one limb of the wearer was yellow, while the other was the before-mentioned color, &c. Washing, and shearing the hair as close to the head as it could be cut, was the next operation to which we were subjected, after which we were taken to the commandant's office, and the rules of the settlement read to us. These were very strict, lengthy, and minute. It took the clerk at least an hour to get through with them, and required a wonderful memory to recollect one-tenth of the whole code. We were

informed by the commandant, Charles O'Hara Booth, Esq., that we had come to a place of *punishment*; and that for the first few months, it would be very severe; but, if our conduct was good, the last part of our term of sentence would be more tolerable.

When he had done, we found a convict overseer, of the name of Sawyer, waiting for us. His first salutation was, "Now you bloody new chum ——! I have you! I will run your legs all off, and have a dozen flogged before night, into the bargain. Come on, and I will show you what it is to work! ha! ha! ha!" and away he started for the bush, walking, or rather running, at the rate of at least five miles per hour. He conducted us to a saw-pit, where there was a large quantity of lumber of various descriptions. "Seize them," shouted he, "and away to the settlement! my bloody eyes; but this will bring you to your senses! But it is nothing to what I've got for you to-morrow." Although seventy pounds was a *legal load*, according to the settlement rules, some of these sticks weighed from 200 to 300 lbs. I selected as light a one as I could, shouldered it with the greatest difficulty, and staggered away. Several men swore they could not carry them, to which Sawyer replied, "go along without them, then; and I will take you to the office. But perhaps you don't know what the office is? It is where you heard that d——d long code of laws read to-day. So sure as I take you there, you will be flogged and sent to bring the very loads you now refuse, when if you don't carry them, you will be flogged until you do. There's no such word as *can't* at Port Arthur." When we got half way to the settlement, we were allowed to rest for five minutes, at the expiration of which, "pick them up!" was shouted, and we carried them in, a distance of half a mile, the overseer walking as fast as he could without any load, and continually singing out, "Come on, you bloody crawlers; keep up or go to the triangles." The moment the loads were deposited in the lumber yard, "come on," was again shouted, and back we went for another load. This time four poor fellows were unable to carry their loads. One of them got

his stick about two-thirds of the distance, and fell under it, close by my side. "Pick it up," said Sawyer, "or be flogged." "Flog and be d——d!" said the other, "for I *can't* carry it another inch." Three of the four were flogged in less than an hour. They were covered with blood when they returned and carried their loads. The fourth was a poor, sickly-looking fellow, and the commandant was compassionate enough to sentence him to five days' solitary confinement on bread and water, instead of ordering him to the triangles. This sentence, although hard, was actually a mercy, as it gave him a chance, not, certainly, to gain much strength upon a pound of bread per day, but to rest himself after the dreadful sufferings of the passage, and there were but few among us who did not envy him. Night came at last, and never had the setting sun looked so much like an angel of mercy to me before. Let the reader remember what our previous sufferings had been, particularly during the passage, and then he can form but a faint idea of my condition. Bad as the present was, the future was still more horrible to reflect upon. I knew that I could not long endure the horrors of the "carrying gang," as it was called, for I was sadly emaciated, and worn out already. The system pursued toward the new hands had been previously explained to me by an English prisoner, who had served two years at Port Arthur, and I felt that there was no hope, unless He who "tempers the wind to the shorn lamb," should save me. It was the rule to keep prisoners three months in this gang after their arrival. The work was generally as hard, and frequently much harder than I had that day performed. From ten to twenty men were, with but few exceptions, daily taken before the commandant, (charged by the overseer with idleness, disobedience of orders, insolence, &c.,) who made it a rule to flog them without mercy. Occasionally, the debilitated state of the prisoner procured for him the milder punishment of the cells; but so long as he was in this gang, being taken to the office insured him certain punishment of some kind. The overseer (Sawyer) was a *devil incarnate*, if there ever lived one. He had been

sentenced to death for highway robbery once, and twice to transportation for life, five years of the last to be spent at Port Arthur, which sentence he was now undergoing.

He was probably made overseer of this gang on account of his being a perfect tyrant; but I am satisfied the commandant, who was really an excellent man, did not know of many of his practices, or he would have been severely punished. Every new load of prisoners from town always brought some money with them. This was strictly prohibited, and many ingenious plans were devised to smuggle it, one of which was, swallowing pieces of gold. Every person in the gang was of course liable to be suspected of possessing these hidden treasures, and in order to discover the real *Simon pures*, and compel them to "*fork over*," the whole were continually "*run*," as it was termed, for months. Loads which it was impossible to carry were heaped upon them, until some excuse was found to take them to the office. Knowing the dreadful punishment that awaited them, they would generally give up their gold, and Sawyer instead of persecuting them further, or taking them to the office, would allow them to go into the bush and lie at their ease while the others worked. Some would stand flogging three or four times before they yielded their money, and this encouraged the overseer to persevere in his persecution of others who were not possessors of a penny. I have no hesitation in asserting that hundreds are yearly ruined in health for their lives, in this gang; and many are carried from the gang to the hospital, and from thence to their graves. Perjury of the blackest character was continually practised by Sawyer, when he took the men to the office. If the victim *fell* under his enormous load, the wretch would swear that he threw it down and said he would not carry it; or if he used a word of remonstrance, he would charge him with outrageous insolence, and make his conduct appear so bad that the commandant would order him to be flogged as an incorrigible offender.

It was in vain that any defense was offered by the victim. If he told the commandant that his load was so heavy he

could not carry it, that gentleman would order Sawyer to bring it to the office, that he might see it. The wretch would select a *light* load instead of the real one, bear it to the office, and swear that it was the one which the prisoner refused to carry. If the prisoner denied a charge of insolence, and called his comrades as witnesses to prove Sawyer a perjurer, they durst not speak the truth, knowing that in a day or two he would persecute them to death for it.

Under such circumstances, who could wish to live? I felt that I could endure any thing but a flogging; and even the torture of the lash I cared but little for, but the *degradation* I could not bear; and resolved that I *would not*. There was an alternative in case I was sentenced to this punishment, which was to perish first by my own hand. Whether I should have done it or not, if put to the test, I can not say; but I thank Heaven that I was spared the trial. I thought then that I should be justified in doing it, but reflection has convinced me that it would have been wrong to rush unbidden into the presence of the Almighty. For the sake of kindred I determined to exert myself to the very utmost, and bear all which the strength I possessed would enable me to, in averting the triangles; yet there was not, apparently, one chance in a thousand for success.

It was customary to keep the new hands, for the first three or four weeks, at night, in the cells. There were 114 of these, nearly all of which had occupants. They were built of stone, and were very damp and cold. We were allowed a blanket, rug, and thin bed-tick, (unfilled,) and a board shelf to sleep upon. This was indeed a luxury, after the dreadful hardships of the day.

The next morning, at sunrise, the bell rang for labor, and "Come on," &c., again sounded in our ears. My own limbs were so stiff and sore that it seemed I could not stand upon my feet. I likewise felt exceedingly weak. Poor Stewart was as bad as myself. We looked at each other in silence, each feeling that there was no consolation, no hope to hold out to the other. When we arrived at the load, which was to be carried a distance of a mile through the thick bush,

horror-stricken as I was at the sight of it, I seized my faithful comrade by the hand, and exclaimed, "Stewart, never give up the ship!" He pressed my hand and answered, "God must give us strength to-day, or we are lost!" These were the only words which either of us spoke that day; but there was many an agonizing look passed between us; many a secret prayer sent upward to the prisoner's God.

A stick of green timber, eighteen inches square and forty feet in length, lay before us. "Now, you bloody ——! I am going to teach you what Port Arthur is, and if any of you don't like the lesson, you have only to get a taste of the cat-o'-nine-tails, and my bloody eyes! but you will fall in love with this business at once. Every man stand up straight when under it, if it drives his legs into the ground two feet. Thirty-six lashes is the penalty here for bending one's back under a load!" Selecting twenty men, he placed ten upon each side, opposite each other, and after ordering the remainder of the gang to carry some round spars, which was almost as hard work as carrying the sawn timber, he exclaimed—"Seize it! up! up with it! shoulder it, you ——!" But several attempts were made before it could be done. "Away you go to the settlement," and we started, staggering as we went. Had the ground been even, and the men of the same height, it could have been carried much easier; but the tallest labored under a great disadvantage, inasmuch as they must often either carry the whole load or be crushed beneath it. I was the tallest man in the gang, notwithstanding which, I was required to stand upright. Several times was I literally crushed to the earth, on which occasions I was threatened with the triangles; and oaths and shameful abuse showered upon me, not only by Sawyer, but the men, who at such times got their share of the load. We were allowed to rest only once on the way, and when we reached the settlement, I was nearer dead than alive. On our way back to the bush we were obliged to run, at least part of the way; and yet it seemed to me I could not stand upon my feet. It was only by exerting my physical powers to the very utmost, that I got through

with the day, during which many of the men were flogged or sentenced to partial starvation in the cells.

The following day, Stewart threw down a very heavy load, and told Sawyer he was ready to die, but could not carry it. He was taken to the office and tried for *idleness, insolence, and disobedience of orders*. This was the charge which the demon overseer preferred against him, under oath. When called upon for his defence, Stewart stated the simple truth, and implored the commandant to spare him the degradation of the lash. "If you would kill me, or if you would have me kill myself," said he, "flog me; but if you have any compassion, pass some other sentence. Starve me to death in the cells; load me with irons; extend my term of sentence; any thing but a flogging." "Look at his police character," said the commandant to his clerk. This document was placed in the magistrate's hand. "What," exclaimed he, after perusing it, "you are then one of the Canadians, sent here for absconding; no other charge ever preferred against you. You look very emaciated and weak; are you willing to do all and suffer all which your strength will admit of? I never flog a man when I think he is." "Indeed I am," replied Stewart. "I shall sentence you to three days' solitary confinement." "Thank you," said Stewart; and he was removed to the cells, where, as he afterwards informed me, he fell upon his knees, and thanked heaven for his deliverance!

CHAPTER XXVI.

Horrible Sufferings.—The *Old Granny* visits Port Arthur.—Speechifying.—A Change.—The Invalid Gang.—The Chartist Prisoners.—The Coal Mines.—The Billet.—Promotion from the *Wash-tub*.—Rev. J. A. Manton.—The Evening School.—Eagle Hawk Neck.—Crimes, &c.—*The Isle of the Dead*.

TO the GREAT RULER of human destinies would I ascribe the preservation of my life, and escape from the dreaded torture of the *triangles*, while in the carrying gang. Every man except myself, who had no money to give the overseer, was flogged in less than a fortnight. Often, very often, was I threatened with the same fate; more particularly when crushed to the earth by the heavy timber. Sawyer seemed to owe me a great *spite* on account of my nationality, contempt of himself and the English convicts generally, and above all, patience under his abuse. Whatever my feelings were, I bore all in silence, knowing that I could gain nothing, but had every thing to lose in contending with such a wretch. Stewart, whose health was sadly impaired, escaped further persecution by being shifted into the invalid gang. The labor continued the same as described in the preceding chapter. I am confident that I did all and suffered all which any man of the same strength could to save his life. Day after day I struggled on, half starved, emaciated, subject to the most horrible physical and mental torture, and praying either for death to end my sufferings, or Heaven to grant me more strength to bear them. The shoes which were served to us on our arrival, were very rough inside, and as we were obliged to wear them without socks, and either run or walk as fast as possible during the day, our feet soon

became perfectly *raw*. At the risk of being punished for destroying government property, I tore some pieces from the new shirt on my back, which I wrapped around my feet; but when I took them off at night, pieces of flesh often adhered to them, and they were stiff with congealed blood. The edges of the timber were sharp, and in less than a week the bones on each of my shoulders were laid bare. A friend kindly furnished me with some remnants of old clothing, with which I made a pad for each shoulder. Sawyer attempted to deprive me of these, saying it was contrary to the rules to wear them; but I went to the chief constable (a Mr. Newman) for permission to use them, which was granted. In any christian land my feet and shoulders would have exempted me from labor; but here, such things were considered mere *trifles*, not worth minding; and I confess that although they often produced the most excruciating torture, I regarded them in the same light. They were nothing, when compared with the heavy loads, and the triangles, and death, which constantly stared me in the face. At night, when I found myself again safe in my cell, my first impulse was to throw myself upon my knees, and thank God that he had given me strength to get through with another day, and during the whole time that I was in the carrying gang, I think there was not a single night that I did not lie awake until 12 o'clock, (my limbs shaking with the cold, and my whole frame in dreadful agony, produced by over exertion,) praying to the prisoner's God for strength to support me on the morrow; and that I might be saved from the fate I so much dreaded.

Four weeks had passed away when I learned with horror that, on the morrow, a stick of timber for a mast to the vessel building in the dock yard, was to be carried, which was far heavier than any of our preceding loads. I knew it would be utterly impossible for me to lift a single pound more than I had done, and gave myself up for lost. In the morning, as the gang were mustering for labor, we were inspected by the superintendent. He was an Irishman, and, I am happy to say, much more humane than many of

his countrymen with whom I became acquainted in Van Dieman's Land. He was a tall, rough, raw-looking fellow, and would swear most unmercifully. Although I had never spoken with him, (fancying that I saw kindness in his looks as he passed, and knowing he had the power to save me,) I ventured to step from the ranks and do so.

"Sir, I trust you will excuse the liberty I take, but there is to be heavy carrying to-day, which is impossible for me to perform according to the regulations of the settlement. I am the tallest man in the gang, and yet am required to stand upright under the heaviest loads or be flogged. I am aware that I have been sent here for punishment, and am willing to do all which it is possible for man to do; but *more* I *cannot*, and unless *you* save me, I shall, in all probability, be taken to the office and flogged. I could bear the pain of the lash; but, sir, I have the feelings of a man, and cannot endure the degradation. Any thing which is possible I am willing to do; but I cannot stand upright with more than a ton's weight upon my shoulder.

"Man," said Mr. Cart, "what you say is right. I am a tall man myself, and shouldn't like the end of one of those d——d great logs on my shoulder, with a dozen or two of them *crawlers* behind me, singing out as I heard them to you the other day — 'stand up, you bloody long ——!' Why, if you stood upright, you would carry a dozen of their loads, at least! Yes, man, yes, what you say is right. Sawyer, come here."

The scoundrel stood before him.

"Now, man, mind what I say, or I'll have you flogged. Never put this man under those d——d heavy loads again, but give him a load by himself. You can always find enough single loads to carry. Mind what I say, man, or I'll serve you as you have nearly all of your gang, of late."

"Thank you, Mr. Cart," I said, as I turned to go away, my heart full to overflowing — "you have saved me from —"

"Is your name Miller?" interrupted he.

"Yes, sir."

"And you are one of the State prisoners?"

"I am."

"D——d shame! D——d bad treatment! But never mind, man, you'll meet friends here when they find you out. D——d shame! D——d bloody shame!"

What more he said I know not, for at that moment "*Come on,*" called me away; but my heart was lighter than it had been before at Port Arthur. Sawyer was greatly enraged at my applying to the superintendent, and swore he would get me flogged for it before night. He would often search half an hour for a very heavy load for me, but I always managed to carry it. I now began to entertain some slight hopes that I should escape the triangles, at least so long as I could carry from 150 to 250 lbs. a distance of from one to two miles. About this time we were employed for a week in carrying shingles from the summit of Tongatabou, a small mountain distant three miles from the settlement. A bundle of shingles weighed from 70 to 100 lbs., and we were obliged to go seven turns a day, making a distance of forty-two miles, with this load, half that distance on our backs; yet it was the lightest work which we had performed since our arrival, and we esteemed it quite a *treat*.

We had been at the settlement five weeks when the "old granny" paid this part of his dominions a visit. He came in the government schooner "*Eliza Ann,*" accompanied by his *suite* and a great number of gentlemen from Hobart Town and the country, among whom was our old friend, *Major Ainsworth!* The prisoners did not go out to work on that day, but were "*kept in*" to listen to one of his "ilignant speeches." At 1 o'clock, P. M., *all hands* were turned out in front of the prisoners' barracks, and ranked up about twenty file deep, in number, nearly thirteen hundred. The officers of the settlement and strangers who accompanied him were all present, to hear the *thrilling address* delivered by Her Majesty's representative, after the fashion described in a preceding chapter.

"You are vile wretches! You have been sent here for violating the just and righteous laws of this colony, and there is no crime which many of you have not perpetrated Hanging is too good for you. You are all *devils!* You are

worse than the devils in hell; but I have got you here for punishment, and you can't escape. *I say, men, you can't escape.* It's of no use trying to run away *here*;" and he talked in a similar strain, upon the subject of absconding, for half an hour.

The most desperate characters at Port Arthur, were chained to a heavy log which they were obliged to carry about with them, working hard in a gang by themselves during the day, and sleeping in the cold cells at night. To them he now turned, and poured forth a volley of low *Billingsgate*, slang and abuse. He made them out to be tenfold worse than the men in general, whom he had already ranked below devils. When he had finished the poor fellows, he said; "There is a man here by the name of Linus Wilson Miller; I wish to see that man!" Little dreaming what was to follow, and thinking he had some good news to communicate, I instantly stepped out in front of the ranks, and exclaimed, "My name is Miller, your Excellency."

"There is a man here by the name of Joseph Stewart; let him come forward, also."

Joe made his appearance, and we stood side by side, before Victoria's representative. Our appearance was such as should have moved the heart of the most brutal savage to pity. The cruel hardships we had undergone had reduced us almost to skeletons! We were pale and haggard, and the heavy logs, under which I had often been crushed to the earth, had so injured my chest that I was compelled to lean my head forward several inches; as standing upright, in a natural position, occasioned dreadful torture to my breast. My waistcoat and jacket, about the shoulders, were red and stiff with the congealed blood, from the wounds underneath, and my whole appearance indicated that I had suffered to the very extreme of which human nature was capable, and that my days on earth were few, unless my condition was speedily ameliorated. It was not until Franklin's eyes were fixed upon me, in which I at once saw rage, malice, and, I think I may add, *murder*, fearfully gleaming, that I suspected his motive in calling me from the ranks. Instinctively I stood

erect, in spite of the pain which it produced in my chest, and gazed upon his countenance, feeling that I would not, if it cost me my life, bow my head a single inch before the *tyrant*.

Addressing me particularly, he said :

"I am glad to see *you here* ! I am glad to see you at Port Arthur ! I am glad to see you looking so miserably wretched ! I am glad to see you in that clothing, which none but the vilest men wear, and which is too good for you. [He alluded to the magpie dress.] I am glad, very glad, that you are here, in my power, where there is no escape, and you can be punished as you deserve. But there is no punishment which is not too good for you. You are the worst man that I ever saw, read of, or heard of. The men here are nothing to *you*, and I rejoice that I have got you safe. To think of running away from your just punishment ; to make your escape from this island ; and that too, after all I had done for you and your party. O ! you are a vile, ungrateful, depraved man ! Stewart was *mised by you* ! You coaxed him away ; I've heard all about it. I have a *little* pity for him, but for you I have none. It's a good thing you gave yourselves up when you did ; the whole country were turning out *en masse* to capture you. You would have been taken in three days. You would have been shot, for I gave orders to my soldiers to shoot you. O ! you're a bad man. I'm glad to see you here, before me, looking as you do. But you were not satisfied with getting away yourself. No, no. You must try to get the whole party away. More than *eighty* men ! O ! you are a demon. And then I've treated them so well ; O ! you're a wretch. They are all good men. I have the kindest feelings for them ; and, if they behave well, they'll some day be pardoned. But you shall never be. I will take care that you remain here for life. You shall never leave Port Arthur. You shall suffer the severest treatment possible in this place. Your condition shall never be made better, but worse than it now is. No matter how good your conduct is, you have forfeited your character for life, and you shall never be treated one jot better, if your conduct is ever so good. When you were

with the other Canadians, you were constantly exciting them to mutiny; but now you're gone, they behave well. Oh, you're a dreadful man. I'm glad I've got you safe. I'm glad you're so wretched. You shall always be so. You were not satisfied with being a leader in that low, wicked rebellion in Canada, but you want to be a leader here, of your companions. But they have found you out, and hate you as I do. O! you are a desperate man. More than all this, I am satisfied you wrote the '*Round Robin!*' None but such a vile wretch as you could ever have written such a letter. Threatening ME, her Majesty's *Representative*; threatening that all the Canadians would take the bush, unless I gave them some indulgence. O! you are a bad man. How I rejoice that I have got you here. I'll break your *American spirit!* I'll teach a young stripling law student, full of Yankee conceit and impertinence, a lesson. I'll break your low republican independence. I'll cure your fighting for the Canadians. You young *American puppy!* I'll give orders to have you treated your whole life, with greater severity than you now are." Turning to the 1300 convicts present, the refuse and scum of mankind, the dregs of Van Dieman's Land, and stretching forth his hand toward them, he concluded as follows: "Now, *my good men*, I caution you all to *shun* this man. Don't let him lead you *astray*. Don't let him get up a rebellion here, which he is sure to do, if you listen to him. BEWARE OF HIM! *shun* him as you would a *viper!!*"

Never was my temper so severely tested as upon this occasion. I knew that any attempt at a reply would insure me an immediate flogging, and to have struck him to the earth, as I wished, would be followed with death. Had he charged me with any thing *immoral*, and calculated to do my character an injury, I would not have borne it in silence; but, as all the abominable sins which he put upon my shoulders were of a different nature, I cared less for his ridiculous abuse. Before he concluded, I got rid of every feeling except pity and contempt for the poor, weak, imbecile old man; and would not have changed places with him for the

world. *Ainsworth* stood at his elbow during the harangue, and I at once understood that he had had a finger in the getting up and sweetening of this *savory pie*. He was a tolerably good *match* for the "old granny," though not *quite* so great a *fool*. When the prisoners were left to themselves, there was a rush made toward me at once, by the most desperate characters, who were anxious to form an acquaintance with one declared to be *such a devil*; but I told them to stand off or I should pollute them, and that I would have nothing to do with them.

I now gave myself up for lost. The officers of the settlement had all been present at the *speechifying*, and I supposed the outrageous abuse I had received would have the effect *intended* by Franklin, to prejudice their minds against me, and carry out his *hellish designs*. I knew that there was a righteous God who had the hearts of men in his keeping, and that He could deliver me from the very *jaws* of death; but a series of ill fortune had attended me for so long a time, that I began to think I was *accursed of God*, as well as man. Yet I had sometimes thought, while walking in the midst of the burning furnace of affliction, that He whom the king of Babylon saw with the three Hebrew captives in the fire, and compared to the Son of God, was with me, and that His arms of mercy were underneath and round about me. If ever I humbled myself before my Maker, and felt my dependence upon Him, it was that night, while locked up in my cell. I thought of the *past*, the *present*, and the *morrow*. I thought not of deliverance from death, and the horrors which surrounded me; but I prayed for strength to bear my fate; nor did I pray in vain! Ere I arose from my kneeling posture, I again heard that "still, small voice," whispering to my crushed and aching heart, "Fear not, for I am with thee! be not dismayed, for I am thy God!" In the morning I arose, calm, and resigned; and feeling that I was prepared for the worst. But "man's extremity," it is said, "is God's opportunity." An hour had not elapsed after the Governor left for town, when the surgeon of the settlement sent for, and thus addressed me: "Miller, you look very ill. You

cannot be able to perform such heavy work, and I shall shift you into the invalid gang."

My heart was too full to reply, and I burst into tears; they were the first which I had shed at Port Arthur. Another week in the carrying gang would, in all probability, have either ruined my constitution for life, or killed me outright; and this deliverance was so *providential*, that I exclaimed as I walked away, "If God be for us, who shall be against us?" From that day every officer in the settlement was a friend! *Franklin* meant his abuse for evil, but there was one, *greater*, who meant it for good. He left strict orders that my punishment should be increased; in other words, that I should be *murdered*: but the officers said among themselves, "How strange His Excellency's conduct is toward this poor American youth! How bitter he was against him! How cruel to tell him that let his conduct be ever so good, he should be treated during his life with increased severity! But we will not obey our instructions with regard to him. So long as his conduct remains good we will treat him well."

The same night I was released from sleeping in the cells. The huts which the prisoners occupied, were warm and comfortable, and I felt quite happy when I found myself occupying a snug berth by the side of Stewart. During the day we worked together, in the government garden, and were praised for our industry and orderly conduct. The officers, when they saw us alone, had always some kind word to say, and treated us with a degree of respect never shown to the English felons. We now became acquainted with Messrs. Frost, Williams and Jones, the Chartist prisoners, tried in England in 1839, for treason, and the sentence of death, which was passed upon them, commuted to transportation for life, three years of which were to be spent at Port Arthur. Frost was a man of considerable influence in England, and had been a magistrate, and mayor of the city of Newport several years, when he headed an army of rebel Chartists, which was defeated, and he, with his two companions, ruined. Williams was made an overseer of the coal mines, on his

arrival, but in an attempt to escape with some of his men, was recaptured, tried and sentenced to two years' hard labor in irons, and was chained for some months to a log, with the desperate characters before referred to. Frost and Williams were both excellent men, and deserved a better fate.

The coal mines referred to are at the northern extremity of the Peninsula distant twenty miles from the settlement. They are worked by about 200 of the worst characters at Port Arthur, and the labor is said to be exceedingly hard. The coal thus obtained is transported to town in government vessels, and sold at from three to four dollars per ton.

I had been in the invalid gang about three weeks, when one evening as we lay in our berths, Stewart remarked to me that he should like to get into the wash-house to work.

"What in the name of common sense do you want to get into the *wash-house* for?" I asked.

"Oh, it is a *billet*. The work is light, and performed under cover; and the men get tobacco, and enough to eat into the bargain."

"Well, I for one would sooner go to the gallows than *there*! Why, Joe, are we not degraded enough already, without *washing* for the convicts of this horrid place? If *you* want the situation, you are welcome to it for all me. No, no! I'll never stoop quite so low as that."

"In my opinion you are more proud than wise; I only wish I could get the chance," rejoined Joe.

The next morning as we were mustering for labor, Mr. Cart called me from the ranks and said, "Wait a little, man." When the gang had marched away, he turned to me and said, "Man, can you *wash*?"

"*Wash*! did you say, Mr. Cart?"

"Yes, man, can you wash?"

"I do not know as I understand you sir."

"D——n it, man! can you wash a *shirt*?"

"I am obliged to wash my own, but never thought of doing more."

"Ah! I see; you are too proud for the business. But take my advice, man. There is a vacancy in the wash-house. The

work is easy, and you will be comfortable there ; at any rate, it is far better than working in the gangs. It is a *billet*, too, and no other man on the settlement would be allowed to have the situation until he had done two-thirds of his sentence. You have only done two months out of two years, but I wish to befriend you ; go, and you shall have a better situation soon."

"But you must excuse me—I—really—"

"D——n it, man ! go along and try to *wash a shirt* ! I am your friend, or I should not give you the chance. There is not another man in the gangs who would not jump at it, and I have denied more than twenty who were due—for a *billet*—according to the rules, to save it for you."

What could I do ? If I refused, it would offend Mr. Cart. Away I marched to the wash-house, cursing the *billet* in my heart, while hundreds, among whom was poor Joe, were *envying* me.

Every Monday morning 1300 shirts were divided among five men (of whom I was one,) to be washed, dried, and returned to their respective owners. An overseer presided over us to see that the work was properly done. For the first three weeks I rubbed the skin from my fingers, and found great difficulty in getting a tithe of the dirt off the shirts, which, when Saturday night came, presented a very sorry appearance. But the pleasantest part of my duty consisted in *serving out* the clean linen. The English prisoners were all enraged at the partiality shown me, and delighted at an opportunity of finding fault. "Do you call that clean, you bloody long ——!" one would say, as he hove the really filthy shirt at my head ; and a thousand insults were offered me, while I peddled them off. Some would even swear their shirts were dirtier than when I received them ; but I had learned to be a philosopher while at the *wash-tub*, and bore all with stoical indifference.

The first Sunday morning a dozen of my *customers*, at least, went to Mr. Cart to complain that their shirts were not properly washed.

"Beg pardon, sir, but look here, sir, my shirt ain't not half clean."

"Ah ! who washed it ?"

"Miller, the American, sir."

"D——n it, man, can't you see ? the shirt is quite clean ; go away man, go away ; don't come here again, or I'll have you put in the cells."

Had any man except myself washed the shirt, Mr. C. would have punished him ; at least so said the prisoners.

I had been employed in this situation about seven weeks, when the clergyman of the settlement, Rev. J. A. Manton, and Mr. Cart, paid me a visit at the wash-tub ; after some conversation with reference to the United States, Canadian rebellion, &c., in the course of which, the former remarked, that had we succeeded our party would have been rewarded and highly honored instead of punished ; he asked me if I had any objections to becoming clerk of the church and school-keeper. I was overjoyed at the offer, and thanked them for their kindness. I went with them to the Commandant's office, and that gentleman thus addressed me :

"I am glad that Mr. Manton has made choice of you as his clerk. I had much rather you would have the situation than any other man at this place. I have watched you closely since your arrival, and have formed a very favorable opinion of your character. So long as your conduct continues good, I shall feel the greatest pleasure in befriending you."

Thus ended all my manual labor for the British Government. The duties of my new situation were pleasant, and in some respects delightful. Mr. Manton ever proved a kind and faithful friend.* He was a zealous and faithful minister of the gospel, and instrumental in doing much good wherever his lot was cast.

* VAN DIEMAN'S LAND, }
PORT ARTHUR, Oct. 24th, 1842. }

DEAR SIR:—I am assured that you will pardon a stranger intruding himself upon your notice, when I inform you that the subject upon which I am to write is the welfare of your son, Linus Wilson Miller. It is now two years since Providence cast my lot at this abode of wretchedness and sin, to act in the fearfully responsible situation of Chaplain of the Station. As such the adult school came under my care. This school is open to all the prisoners on three evenings of the week. They are formed into classes, and taught by those from among their number, who may have been favored with an education in youth. Among these teachers I observed a young man of intelligent appearance, and very steady and praiseworthy conduct. At first I said nothing to him, nor did I make any inquiry respecting him, but kept my eye upon him. After a time I inquired his name and circumstances, when it appeared he was one of

The evening school was held in a large building erected for that purpose, and was attended three nights in each week by from 100 to 200 prisoners, who, after the toils of the day were over, preferred learning to read, write, and cipher, to spending their time foolishly and wickedly in their huts. School books were supplied by government, and an excellent library of religious, historical, and miscellaneous works, provided by the liberality of private individuals who feel interested in the welfare of the prisoners. Many hundreds, who know not their A. B. C., here acquired a good common education; and it is to be hoped, made some advances toward reformation of conduct.

Stewart at the expiration of one year, obtained a comfortable situation in the family of an officer. We both gradually recovered from the effects of our hard treatment, although it was a long time ere my chest was well.

the unfortunate young men who had been sent from Canada. After some few weeks had elapsed I wanted a person to act as school keeper and clerk of the church, and made choice of your son; and I feel very much pleasure in informing you that up to the present time his conduct has been all I could wish it to be. About a month ago his period of stay at the penal settlement expired. He then obtained a situation as Tutor in the family of the Commissariat officer of the Station. It will not fail to be a comfort to your minds to know that your son has passed through his probation at this severe and trying place, with knowing as little of its privations, except for a few weeks as well could be, and is now free from its restrictions, and I trust forever.

You will be pleased to know that his health has been good, and his way thus made plain; and it will give you greater pleasure to be acquainted with the fact, that though a prisoner, your son has commended himself to us as a CHRISTIAN. We all regard him as a good man, walking in the fear and love of God, and in the comfort of the Holy Ghost; and should he in the course of a few years be permitted to return to his home, I trust that you will find that his afflictions have yielded the peaceable fruits of righteousness. In the course of a few months we are in hopes that with the recommendations he will be able to get from this place, he will obtain a partial freedom, and afterwards there can be little doubt of his getting a free pardon. May God in his good providence restore him to your aged arms.

Linus knows nothing of my writing to you, but I have thought that a line respecting him from another party would be acceptable to you; and from the high regard I bear toward him, and the fervent wishes I entertain for his present and eternal welfare, I would take this liberty. I trust the God whom you serve will afford you all that consolation which you need under your afflictions. To lay our sons in the grave, I know to be a sad and trying dispensation; but to loose them under such circumstances as yours, even worse. But you know the promise is "as is thy day, thy strength shall be," and you have this comfort also that your son has not forgotten his father's God. So look up, and urge your way to a better world.

I am, yours sincerely, tho' unknown,

MR. BENJAMIN MILLER.

J. A. MANTON.

To describe Port Arthur as it then was, the multifarious regulations, effect of the punishment and strict discipline upon the convicts, the crimes prevalent among them, &c., &c., would require a volume of itself. The place was a sink of sin and horrible iniquity ; and I have no hesitation in saying, that hundreds of abominable crimes *against nature*, such as the laws of England punish with death, are *daily* committed at this *Sodom*, as it is significantly and properly termed, in Van Dieman's Land. To get rid of the severe punishment of the place, many abscond with the intention of escaping to the main land. In a few instances they have been successful, but by far the greater part are taken at Eagle Hawk Neck, a narrow isthmus, guarded by a large number of ferocious bull-dogs, (chained so near to each other that a man cannot pass between them without being torn to pieces,) military, and constables. Those who are taken invariably receive 100 lashes upon the bare back. I witnessed the flogging of twelve such men at one time. It was a horrid spectacle, which no language can describe. Murders are frequently committed by others, who become tired of their lives and take this step for the sole purpose of ending their own and the misery of their comrades. Those who die at the settlement are buried on a romantic little island named the Isle of the Dead, in the harbor, about one mile from the settlement wharf. My duty as clerk led me to visit the Island with Mr. Manton whenever a funeral occurred, and many a lonely walk have I had among the humble graves with which it abounds. When a prisoner died, his remains were dissected, put into a rough coffin in a state of *perfect nudity*, (even the shirts in which they die are stripped off!) carried to the wharf by four men, placed in a boat, and amid the jeers and curses of the boatmen, conveyed to the landing place at the Isle of the Dead. Here it is left until the clergyman arrives, when it is borne to the grave, the burial service read, and the body committed to the dust, there to remain until the morning of the resurrection. "There the wicked cease from troubling, and the weary are at rest." There the prisoners sleep together ; they no longer hear the voice of the oppressor. In solemn silence they lie, and the surges which constantly beat upon the shore of the Isle of the Dead, sound their only requiem.

CHAPTER XXVII.

The author is employed as tutor, in the family of Gen. Lempriere. — The old Granny recalled. — Visit to Hobart Town, — Treatment of the Canadians. — Escape of Gemmell, &c. — The new Governor. — Edward MacDowell, Esq. — Exposure of Franklin's villainy. — U. S. Consul. — The *Franklin Clique and illicit Distillery*. — The pardons. — Sir E. E. Wilmot shamed into an act of justice. — Departure of twenty-seven Canadians for the Sandwich Islands. — Residence in Hobart Town.

IN the capacity of tutor to the accomplished and interesting family of the commissariat officer of the settlement, (assistant commissary General Lempriere,) I should have forgotten, had it been possible to do so, that I was an exile, and a stranger in a strange land. Mr. Lempriere was one of those rare specimens of humanity whom nature has endowed with a soul so much larger and more noble than we generally meet with, that it is in vain to attempt doing them justice, and I shall only say of this gentleman, that I shall ever venerate his name and cherish the liveliest recollections of his goodness. To his sovereign he was loyal to a fault; yet, had he been my own countryman, yea, *father*, I could not have expected better treatment than I received. After all my sufferings, to find *such a home*, and *friends*, in *such a land*, was indeed most fortunate.

My friend Stewart at the same time obtained a situation as signal man on the peninsula, in which his pay was sufficient to render him comparatively comfortable; so that on the whole, we lost but little through our attempt to escape. Great was our joy when we heard that old Franklin was recalled, and his successor, Sir E. E. Wilmot, had arrived; and I will add by way of comment, great, very great was the joy

of the whole country. We both now applied for "tickets of leave," (a partial emancipation,) which were granted by the new Governor.

Soon after, I obtained permission to visit Hobart Town, where I met with several of my companions in exile; from whom I learned the history of our party since we left them at the Lovely Banks. Previous to our surrender, the *old granny* paid them a visit, and delivered a *lecture* upon the subject of my humble self, absconding, &c. After calling me ill names, and venting his spleen and rage, as he afterwards did to me personally, he told them that if they followed my vicious example, and absconded, they would all be shot down without quarter; as he had given such orders to *his* soldiers: and, if any escaped to the United States, a thing "*quite impossible*," he would send a detachment of military and bring them back! [Doubtless the old man thought *his* soldiers would be able to do all this.] He then ordered them to be dressed in *maggie*, (as a punishment for our absconding,) and removed to Green Ponds, a distance of only six miles. At that place they were put under the superintendence of a Scotchman, known as "Bobby Nutman," who was called the greatest tyrant upon the island. "Bobby," however, changed his policy, and treated them well; and if the party worked hard, it was the fault of their own men who acted as overseers. Again they were removed to Bridgewater, where their sufferings were increased. Here old Franklin paid them another visit, and read a letter which he had received from Lord John Russell, authorizing his Excellency to give the Canadian prisoners any indulgence he thought proper, with the exception of allowing them to return to Canada. With this document in his hand, he told them that if their conduct continued good eleven months, he should grant them "tickets of leave!" Let it be remembered that he had previously promised the party all the indulgence which his instructions would admit of, and his pledged faith may be estimated at its true value.

Finding themselves robbed by the superintendent of nearly half their rations, they preferred a charge against him to that

effect. An investigation took place, the charge was proved and the superintendent dismissed ; but as a punishment for complaining, the party were broken up, and sent in small parties to different road stations on the island, to work and herd with the English felons. On the 22d February 1842, they received the promised *tickets*, but subject to the most stringent and tyrannical restrictions, confining them to six districts in the interior. James Gemmell made his *escape* about this time. Messrs. Wait and Chandler had also taken *leg bail*, soon after we were sent to Port Arthur, and the three arrived safe in the United States. Several ineffectual attempts were made to abscond, by others, and much of their earnings spent in this way.

Before returning to Port Arthut, I called upon the new Governor, who received me very graciously, said he was sorry that the Canadians had been so ill treated, and had upon the assumption of his office duties, sent a despatch home upon the subject, recommending that all of our *pardons* be immediately granted. "An answer may, in the course of a few months be expected," said he, "and I shall feel the greatest pleasure in giving you the earliest possible notice of anything in your favor."

In endeavoring to negotiate a loan of some law books to peruse during my leisure hours, I formed an acquaintance with the first barrister in the Australian Colonies, Edward MacDowell, Esq. This gentleman was Attorney General of Van Dieman's Land, when our party arrived, but had since given some offence to "Franklin," who recommended his dismissal from office. I now obtained some further and important light upon the *character* and *conduct* of that tyrant.

"I saw all the papers," said Mr. MacDowell, "*which accompanied your party from England and Canada. There was not the scratch of a pen to authorize the Governor to receive you upon this Island, much less to treat you as convicts. You had a right, according to the laws of this Island, to land as freemen, and to leave the same day if you chose to do so. Every person who has held you in custody here, is liable to an action for false imprisonment !*"

Mr. MacDowell drew up a petition praying for an immediate pardon, which he presented to the Governor, telling him at the same time, that unless it was granted, it was his intention to institute legal proceedings in my behalf at once, to compel my discharge. The Government officers were greatly alarmed, and begged of him to desist, stating that my pardon would soon arrive from England, and at my request he did so. Upon returning from Government house we met Major Ainsworth in the streets. He excused his own conduct by saying that as I was a lawyer, they thought it best to make me responsible for the conduct of the whole party ; that I had suffered much wrongfully, and he was, for one, willing to make amends for the past, by recommending to his Excellency to allow me to return to my own country at once. As he left us for that purpose, Mr. MacDowell said to me, "There goes a mate to old Franklin. He has persecuted you for years, and now acknowledges that it was not for your own, but the sins of your whole party. Did he not fear me, he would not go to Government house on such an errand."

I likewise formed an acquaintance with E. Hathaway, Esq. United States Consul for Van Dieman's Land. Mr. H. and lady soon became my warmest and best friends in Hobart Town. They seemed to feel for the Canadian prisoners as Americans should, and were ready to do every thing possible for our welfare.

Upon my return to Port Arthur, an attempt was made by the Franklin *clique*, to deprive me of the friendship and services of Mr. MacDowell. John Price, Esq., Police Magistrate of Hobart Town, took pains to inform him that I was carrying on an *illicit distillery* at Port Arthur. Price assured Mr. MacDowell, upon his honor, that he knew it to be a fact from the most positive information, and hinted at the same time that I must be unworthy of his friendship, and he would do well to cut me. Instead of acting upon this *friendly* suggestion, I was sent for, however, and made acquainted with the charge, which, it is needless to say I found no difficulty in proving to be as false as it was malicious. All, however, tended to my advantage in the end.

In October 1844, I received the joyful tidings that about thirty

of the Canadian prisoners, including myself, were pardoned.* My feelings upon the receipt of this important information, were quite different from what they otherwise would have been but for the knowledge that we had been *de jure*, free men for years, and that the abominable slavery we had endured was not only a wanton violation of the laws of justice and humanity, but even of Van Dieman's Land. I was thankful to God for the favor, but toward VICTORIA, and her illustrious Representatives, my sentiments were of a different nature.

Two months passed away before any thing further was heard of the pardons, and a disposition was manifested by the authorities of Van Dieman's Land, to lengthen the term of their usurpation of power over us to the utmost possible extent. At length Mr. Hathaway applied to the Colonial Secretary upon the subject, and was furnished with a list of the names of the pardoned Americans. My own was not mentioned! Mr. H. inquired the reason, and was told that as I had attempted to escape, my pardon would be withheld. "But," said my friend, "Stewart and Paddock likewise absconded, and I find their names here; why this partiality?" "Oh! they are different characters. Miller is a lawyer, and a very dangerous man. He has given us great trouble; but since you have raised the objection, we will keep theirs back also." Poor Stewart and Paddock accordingly suffered, like the dog in the fable, through being found in bad company. They were notified by the Comptroller General of convicts that their pardon would be withheld six months. At the same time an attempt was made to deprive me of the friendship of Messrs. Hathaway and MacDowell. The Colonial Secretary took pains to call upon each of these gentlemen, for the sole

*HOBART TOWN, OCT. 12th, 1844.

My Dear Sir, —I yesterday received a letter from Mr. Everett, the American Minister at London subjoining a list of about thirty names of those who have been recently pardoned, and I am happy to inform you that *your name appears among the number*. A copy of the names I have handed to Mr. Mott, that he may notify the fortunate individuals.

* * * * *

I am, my dear sir, your's, truly,

L. W. MILLER, Esq.

E. HATHAWAY.

purpose of informing them that I had told somebody that I was a *Scotchman*. "Whom did he tell so?" Mr. H. inquired. "Oh, I don't know ; that is, I have forgotten ; but as he says he is a Scotchman, you will not, of course, use your influence as United States Consul in his behalf."

"Sir," said Mr. H., "I know him to be an American, nor do I believe he ever said to the contrary. You must have been misinformed. I shall continue his friend until you can show some other reason against it."

When the officious Secretary made the important announcement to Mr. MacDowell, that gentleman replied :

"Are *you* not a Scotchman, Mr. Bicheno?"

"I am," was the reply.

"Well, would you hang the man because he says he is one? I don't care a d——n if he is a Scotchman. 'A man's a man, for a' that,' I suppose. Fie! fie! Mr. Bicheno; you are employed in small business. You hate that young man because he is an American and has got an American's independence. You had better give him his pardon though, for by ——! if you do not, I will prosecute the Government in his behalf for damages."

This is only one instance of many of a similar nature, which might be related.

I now bade adieu to my kind friends at Port Arthur, and entered Mr. MacDowell's office, as his clerk, with a handsome salary. Acting under the advice of my patron, I called upon his Excellency at Government house. Instead of the friendly reception which I had before met with, the Baronet's brow darkened when I was ushered into the receiving room by the orderly, and my name announced.

"I have but a minute to spare to hear your business, and you will please to be brief," said he, in a stern voice, meant, as I thought, to intimidate.

"I have called to ascertain the reason why my pardon is withheld. I have been told by your subordinates in office, that it is because I once absconded, but I cannot believe your Excellency can be so *unjust*. I have suffered two years at Port Arthur, the highest penalty which could have been inflicted

for the offense ; my ticket of leave was withheld for more than a year after my sentence expired ; and as the offense, if such it can be called, was committed years since, surely it ought to be forgotten. I have atoned for my original offense for which I was here sent, by suffering years of horrible slavery, and now, when the Canadian and Home Governments, and her Majesty, whose servant and representative you profess to be, are satisfied, and have sealed my forgiveness, it is both unjust and cruel in the extreme to withhold it. Shall a man be persecuted unto death for endeavoring to escape from such slavery as the Canadians have endured here ? You know as well as I do, that our detention and treatment on this island have been illegal, that they have been against law and justice ; that your predecessor committed as gross an outrage upon our rights as was ever perpetrated against the African race, and because I dared to rebel against it, or rather escape from it, I have been a subject of special persecution for years. My persecutors have even said that from my being a lawyer, they have deemed it *right* to make me responsible for the whole party, and you are yourself aware that sins committed by my comrades while I was suffering at Port Arthur, were heaped upon my shoulders, and charged to my account. Why this unnatural persecution ? It was not for absconding, but for being an American, in spirit and in heart, for not meekly wearing the yoke and kissing the burden upon my shoulders ; for daring to evince the spirit and feelings of a man in the presence of my tyrants."

Here his Excellency interrupted me, and exclaimed in a great rage, "How dare you come here to ask such a favor ? Do you expect the same treatment as those who have never absconded ? I have decided that you shall not receive your pardon under six months, and I shall abide by that decision. Nothing can, or shall alter my resolution ;" and he stamped his feet upon the floor.

I walked out of the room without ceremony, but ere I reached the outer door, turned back and again confronted the Baronet.

"Sir," said I, "but a few months since you received me in

this very room, in the most friendly manner; told me you had recommended me to her Majesty for a free pardon, and when it arrived, you should feel great pleasure in bestowing the much coveted boon, as soon as possible. I have placed the most implicit faith in your friendly assurances, for I believed you to be a gentleman. What my present sentiments are I leave you to—”

“Stop! stop!” interrupted he, rubbing his forehead with the palm of his hand, while his face was red as scarlet, “I had forgotten—that is—your enemies have been—but it is no matter; just draw up a petition—mere matter of form—and send it in to me: I will give you your pardon; lose no time, send it in to-day, send it in at once.”

I turned upon my heel and marched out whistling *Yankee Doodle*, and when I got out of doors heard the old gentleman sing out, “Send it in at once.”

I did send it in, and the next morning, the Comptroller General, who had persecuted me for years, without, however, even knowing me when we met, sent for me to his office, and placing my sealed pardon* in my hand, said in a bland tone of

<p>*VAN DIEMAN'S LAND, { [L. S.] No 2. {</p>	<p>To ALL TO WHOM <i>these presents shall come</i>, I, SIR JOHN EARDLEY EARDLEY WILMOT, <i>Baronet, Lieutenant Governor of the Island of Van Dieman's Land and its dependencies,</i> send greeting:</p>
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WHEREAS, by Her Majesty's Royal Warrant under the sign manual, bearing date at Buckingham Palace, the third day of June, One Thousand Eight Hundred and Forty four, countersigned by one of Her Majesty's secretaries of State, and addressed to the Lieutenant Governor of the island of Van Dieman's Land for the time being; Her Majesty the Queen was pleased in consideration of some circumstances humbly represented to her, to extend her grace and mercy unto Linus Wilson Miller, who was tried at Canada, in the year 1838, and convicted of feloniously invading the province of Upper Canada, and sentenced to death, which sentence was commuted to transportation for life, and to grant him her absolute pardon for his said crime; Now know ye that I, the said Sir John Eardley Eardley Wilmot, Baronet, Lieutenant Governor of the island of Van Dieman's Land and its dependencies, have received her Majesty's warrant, and do hereby certify and declare that the said Linus Wilson Miller hath and ought to enjoy her Majesty's absolute pardon for the said crime, whereof he was convicted as aforesaid, and I do hereby discharge the said Linus Wilson Miller from all custody in respect of his said sentence and transportation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Island of Van Dieman's Land to be hereunto affixed.

Dated at Hobart Town, this seventh day of February, in the year of our Lord One Thousand Eight Hundred and Forty-five.

By his Excellency's command,
J. E. BICHENO, Colonial Secretary.

E. EARDLEY WILMOT,
Lieutenant Governor,

voice : "I congratulate you upon your restoration to liberty; you are a free man, and it gives me pleasure to say so." I did not even thank him, for I well knew he spoke insincerely.

Great anxiety was felt by those who were pardoned, with reference to obtaining passages home. As the pardons had been granted in consequence of the intercession of the United States Government in our behalf, the most sanguine hopes were entertained that some means would be provided either by that Government or our friends, for that purpose. The Lower Canadians who were sent to Sydney had received such assistance! but alas, our expectations were not realized! Owing to the distressed state of the colony, for three or four preceding years, wages were extremely low, and employment very difficult to be obtained. Some of the men, among whom was Robert Marsh, at one time wandered about the island for four months in very destitute circumstances, sleeping in the bush at night, and living almost wholly upon the opossum and kangaroo, without finding a single person who would board them for their labor. Scarcely one of our party had been able to lay up a single dollar in store. Those who received any wages, generously shared their little all with their more needy comrades. Many were so reduced in health, through their sufferings, as to be unable to do any work, had an opportunity offered; and all were poorly clothed. Seldom, indeed, did any American vessel, *homeward bound*, call at Hobart Town; so that there was little prospect of *begging* a passage direct to America. At length the American whaler "Steiglitz," Capt. Young, made her appearance in the harbor, but she was bound on a three years' voyage to the north-west coast. Capt. Young, upon learning their situation from Mr. Hathaway, who was ever ready to intercede in our behalf, kindly offered them a passage to the Sandwich Islands, on condition that they should pledge themselves to pay the owners of his vessel for their board as soon as possible after their arrival in the United States, and twenty-seven of our party eagerly embraced the opportunity, trusting to Providence for the future, and preferring to go any where, rather than remain longer in a country where they had been so badly treated. On the 27th of January, 1845, the poor

fellows embarked, and reached the Sandwich Islands in safety on the 27th April following. But in September 1846, only about one-half of their number had arrived at their homes. Among the latter were Messrs. Sheldon and Marsh, whom I have had the pleasure of since seeing, and hearing them speak with the most profound gratitude of the kindness shown them by their countrymen, both at the Sandwich Islands and upon their landing in Boston. May their kind benefactors be abundantly rewarded.

During a residence of several months in Hobart Town I had an opportunity of becoming better acquainted with the free population of Van Dieman's Land, their manners, customs, &c.; which, with a brief sketch of the history of the Island, and the most prominent features that distinguish this remote region of the civilized earth, (if it deserves to be ranked as such,) will form the subject of the next chapter.

CHAPTER XXVIII.

Discovery of Van Dieman's Land, Settlement, &c.—Progress of the Settlement.—Emigration.—Separation from the Parent Colony.—Commerce.—The Public Lands, Markets, &c.—The Reaction.—Assignment of Convicts Abolished.—Probation System.—Increase of Crime. &c.—Embarrassment of the Colonial Government, and Taxation.—Disaffection, &c., of the Colonist Population.—State of Society—Intemperance.—Education.—Sunday Schools.—Public Institutions, Societies, &c.—Religion.—Administration of Justice.—The Aboriginal Inhabitants.—Products of the Island.—Animals, Vegetables, &c.

VAN DIEMAN'S LAND was discovered by the Dutch navigator, Tasman, in 1641, who named it after his patron, Anthony Van Dieman, Governor of Dutch East India. Owing to its never having been surveyed except in certain districts, and its very uneven surface, no definite opinion can be formed of the number of square miles it contains, which have been variously estimated from 22,000 to 27,000. Its coast is, with slight exceptions, iron bound and extremely irregular, and calculated to strike the wary mariner with dread, as rife

with death, horror, and shipwreck ; yet it affords some good bays, which only require to be thoroughly surveyed and beacons erected, to divest it of half its terrors.

For a century and a half after its discovery, this Island remained in the sole possession of its aboriginal inhabitants. The mariner shunned it as a region of death, and the enterprising emigrant never dreamed of wandering hither while our own vast continent, and numberless newly discovered isles, presented so many superior attractions. And when at length, civilized men turned their attention to this part of the globe, the flowery banks and rich forests of New Holland long rivaled its little insular neighbor, which was passed by as unworthy of notice.

The first settlement formed upon its shores was the result of chance. In 1803, a Capt. Bowen, who was bound for the south-western coast of New Holland, to establish a penal settlement in that quarter, was driven by stress of weather into the mouth of the Derwent, and finding the country adapted to his purposes, landed his men at Risdon Cove, and commenced a settlement. In 1804, Col. Collins arrived with 400 convicts and 50 marines from Botany Bay, and removed their station to the spot now occupied by the city of Hobart Town, where he acted in the capacity of Governor during the remainder of his life. The little colony thus established, was purely penal, and it retains much of its original character to the present day. After a few years, experiments began to be made in cultivating the earth, and the result was sufficiently encouraging to induce emigration, first from the parent colony and finally from Great Britain. As the number of convicts increased, and the term of their colonial sentences expired, it became a matter of convenience to the government, to settle the colony with a sufficient number of free persons to take charge of and employ these fallen men, in agricultural and other pursuits, until they were entitled according to their original sentences, to emancipation. To this end, the most flattering accounts of the colony were circulated at home, and large grants of land offered as a bounty to emigrants, on condition that they should invest capital, and incur expenses to

the amount of one shilling and sixpence per acre. While these regulations continued, the colony rapidly increased in free population and wealth, many of the settlers being men of character and respectability. For twenty years the island was held and governed as a dependence of New South Wales, but in 1824, the Home Government made it an independent colony with a legislative council, judges, laws suited to its penal character, &c., &c. Col. Arthur was the first governor appointed by the crown. In the mean time, the ports, (which for many years were closed,) had been opened to the vessels of all nations, and commerce commenced. As new colonies were being formed upon the coast of New Holland, a market was thus created, and the produce of the farmer was sold at high prices. Property, as a natural consequence, rapidly rose in value, and Van Dieman's Land began to be considered a mine of wealth. The government took advantage of the spirit of speculation thus engendered, and set a price upon land, which was gradually increased from five shillings to a minimum of twenty shillings per acre. For a while sales were made at this exorbitant price, but at length a reaction took place. The colonies which had afforded such an excellent market, began to export in turn; prices fell to an opposite extreme, and ruin and insolvency fast followed in the train. To add to the difficulties of the colonists, the old assignment system under which almost all manual labor had been performed for a trifling expense, was abolished; the convicts were withdrawn from their old masters, and the probation system established. This change, however, was probably owing to the abuse by the master, of the confidence reposed in him by the government. The assigned convicts were, in general, very badly treated, and their wrongs at length reached the ears of those in authority at home. The settlers had been, for nearly 30 years, allowed as many servants as they chose to apply for, whom they treated as *slaves* in every sense of the word. In the year 1840, transportation to New South Wales was abolished, and all prisoners of the crown sent to Van Dieman's Land, under the probation system. No less than 16,000 of these persons were landed at Hobart Town

during four years, and the balance between the free and convict population destroyed. The evils of the new system have been of the most aggravated nature. Crime has fearfully increased, and there is no longer safety to either character, property, or life. Most of the settlers would gladly leave the colony if possible, and many have forsaken their *all* and fled from the Island as an accursed place, which they could no longer endure. The free population, in general, keep as distinct as possible from the bond, but the foul leprosy is in their midst, and they cannot wholly escape pollution. But it is the young and rising generation who suffer most in this respect. The children, owing to the climate, are remarkable for precocity, and eagerly drink in a species of knowledge, which must sooner or later exert an evil influence upon their minds, if not characters. The higher classes are less exposed, but judicious management on the part of parents is felt to be a subject of the first importance.

The Colonial Government is greatly embarrassed by debt, and taxation has of late been resorted to; yet not without meeting decided opposition from a vast majority of the taxpayers. During the year 1845, numerous public meetings were held in the metropolis of the island, and inflammatory speeches delivered, denouncing taxation without representation. The spirit which characterized the American colonists in '76, is already awakened in their breasts, and requires only an equal chance of success to produce the same results.

The free population of the island, i. e. those who have emigrated, numbers about 32,000; the emancipists 20,000, and the convicts under sentence 36,000, of whom 9,000 are females, making an aggregate of 88,000 inhabitants.

Society among the higher classes, is good. They carried with them to their new homes, the manners and customs of the old; and, as polished and refined circles may be found in Van Diemen's Land as elsewhere; and good morals are as strictly and rigidly observed. This last, however, cannot, I regret to record, be said of the lower classes. Intemperance is a prevailing evil, and Father Mathew might here find an extensive field for the exercise of his philanthropy. In

Hobart Town, the population of which is nearly 20,000, an incredible quantity of brandy, rum, gin, and strong beer, is consumed.

Manual labor is regarded as quite beneath a "*respectable*" man. This great evil has arisen from the universal employment of convicts, both in and out of doors; and not until compulsory labor is done away, will it be remedied.

There are some very good schools in Hobart Town and Launceston; but in the interior, education is sadly neglected. The sons of the settlers think far more of cracking a *bullock whip*, or riding a horse, than learning their books; and idleness with them appears to be second nature. Sir John Franklin performed *one* good deed during his administration, by causing a building for a college to be erected at New Norfolk; but no effective step has, as yet, been taken to render it of any service to the youth of the colony. The children of Hobart Town generally attend Sunday Schools, and during my residence in that city, it gave me great pleasure to witness their quiet, orderly conduct, and remarkably good behavior, at all times, but particularly on the Sabbath. Seldom indeed could a child be found at play in the streets during that holy day.

An orphan school, in which several hundred children (mostly illegitimate) are supported, and receive a decent education, has been established for several years at New Town, (two miles from Hobart Town,) by Government, and is now under the superintendence of C. O. H. Booth, Esq., formerly commandant at Port Arthur. A lunatic asylum is likewise maintained at New Norfolk. A mechanic's institute has been in operation in Hobart Town since 1841. It is furnished with an extensive laboratory and library; and a course of scientific lectures delivered. This institution bids fair to exert a beneficial influence upon the youth and laboring classes. "The Royal Society of Van Dieman's Land, for Horticultural, Botany, and the advancement of science," is patronized by her Majesty, and is in a flourishing condition.

The Established Church, Wesleyan Methodist, Church of Scotland, Baptists, Quakers, &c., &c., maintain divine

service in town; and the two first in the most populous districts in the interior. The Wesleyans are doing more than any other denomination for the advancement of religion. An elegant and costly Jewish synagogue was dedicated in 1845, where worship is conducted on the Jewish Sabbath, in the Hebrew language. The Catholics are numerous, especially among the convicts.

The administration of justice in Van Dieman's Land, owing to the perjury of witnesses and difficulty in obtaining conscientious jurors, is very defective. A learned judge on the bench, and more than one learned attorney-general, have declared *ex cathedra*, that oaths at half-a-crown were as plentiful as blackberries.

There are seven newspapers published in the colony. The principal are the "Hobart Town Courier," "Hobart Town Advertiser," and "Colonial Times & Tasmanian." They are generally ably conducted. The two last are staunch advocates for *reform*, and often contain violent strictures upon the British Government, and commendatory references to our American institutions.

Of the various grades of the human species found scattered over the earth, the aborigines of this island belong, without doubt, to the lowest. Modern writers have classed them (as also the natives of New Holland, New Britain, New Guinea, &c.) with the Ethiopian variety. They appear to me to be partially blended with the Malay, the Ethiopian, however, predominating. Their skin is jet black; their hair black, woolly, curly, thicker than that of the negro, and less soft, though even finer than the Malay; head large, round laterally, and somewhat contracted anteriorly, whereby its cavity is perceptibly diminished; forehead very low, yet slightly arched; eyes black, small and piercing; face large, and features fully developed; cheek bones prominent; nose flat, and very broad; lips very thick; mouth much wider than the negro; the chin somewhat receding, and not so narrow as the Ethiopian. Their stature is low, and their aspect more fierce than formidable. In their native state, they lived by hunting, or rather snaring the kangaroo, opossum, &c.,

which, with the shell-fish abounding on the coast, and the native bread—a bulbous root weighing from three to seven pounds, growing in the earth from one to three feet beneath the surface, which when boiled is tasteless, and resembles rice in appearance—form their only food. They appeared to have no idea of other habitations than nature provided, (such as caves, hollow trees, &c.,) and lived, literally, in a state of nature; dirty, squalid and disgusting, in all their manners and customs. In their native wars they fought with wooden spears and clubs, throwing the former with great precision and force, from thirty to fifty yards. The victorious party always devoured the captives and slain of their enemy. It has been asserted that they worshipped idols, but their lack of inventive genius to construct any thing resembling an image, seems to forbid the idea. I had frequent opportunities of observing a native lad, of the age of fourteen years, who was engaged as cabin-boy on one of the colonial vessels, and was pleased to find that he displayed much shrewdness, and a capacity and readiness to learn and do almost any kind of labor. He knew the English alphabet; could spell words of one syllable, and count well. If properly dealt with, I doubt not he would be found to possess no insignificant powers of mind. The number of natives on the island, when first settled by Europeans, is unknown, and has been variously estimated from 1500 to as many thousands; but a medium number is probably nearer correct. Nothing is, or can be known concerning them prior to the above period, as they have no traditions; but their history since is written in blood. Aggressions were continually made upon them in their imbecile and inoffensive state, by the colonists, until the demon of revenge was aroused in their breasts, and they thirsted for the white man's blood. They laid in wait by day, behind the trees of the forests which he frequented, to pierce him with their spears; lightened the darkness of midnight with the blaze of his dwellings, and broke its solemn stillness with their fearful war cry of "wah! wah! wah!" and the dying groans and shrieks of his wife and children. Then it was that Arthur showed the dark traits of his char-

acter. Arming the colonists and reckless convicts, with the few military under his command, he mustered a large force of sanguinary spirits, who needed not even the offers which he made, of rewards and pardons, for *native scalps*, to incite them to slay without mercy. Arthur led them on, and in a few weeks they hunted down between five and six thousand native men, women and children, whose mutilated remains were left, unburied, to enrich the soil of an island which was their own, according to the first principles of natural law. About two hundred were captured then and afterwards, by *treachery*. These were placed upon Flinder's Island, in Bass's straits, under charge of a commandant, superintendent, surgeon, detachment of military, &c.; and some efforts made to instruct them in the arts of civilized life, but with little success. In 1845, their number had dwindled down to fifty-nine; and doubtless, in the course of a few years, 'not one will be left to chant his mournful dirge over the wrongs of his exterminated race. He, whose hands are dyed with their blood; who caused *fifteen hundred convicts* to be executed within sight of his own door, during his administration of the government of that colony; and afterward signed the death warrants of LOUNT, MATTHEWS, MORROW, VAN SCHOUTZ, ABBEY, and other martyrs to the cause of liberty in Canada, is now *Governor General of Bombay!* Thus it is that Britain rewards her *tyrants!*

Van Dieman's Land is favored with one of the most delightful climates in the world. Very few diseases are prevalent, and the Anglo-Saxon natives are, almost without exception, wealthy and robust. The atmosphere is clear, very arid, and lacks that freshness which renders the air of the northern temperate zone agreeable to inhale. This is probably owing to the ocean by which it is surrounded.

Two ranges of mountains run parallel to each other across the Island, known as the Eastern and Western ranges. Mount Wellington, Table Mountain, and Ben Lomond, are the highest peaks, and their summits are covered, at least nine months in the year, with snow. The first is 4,500 feet high, and distant only three miles from Hobart Town, which its lofty and

bold front seems to overhang. Upon its top stands a small lake of fresh water, which, by means of an aqueduct, is made to supply the town. Upon the north-western side of this mountain, a beautiful cataract has been lately discovered, which, when the water of the lake is raised by the fall and winter rains, presents a magnificent spectacle, the descent being upwards of 200 feet. Numerous lagoons and small lakes are found in other parts of the Island. The Derwent is the principal river, but even this is only navigable for about twenty-five miles, except by small vessels. The Tamar, which empties into the sea on the north side of the Island, and upon which Launceston and Georgetown are situated, is formed by the united waters of the North and South Eske, Maguaric, and Lake rivers, which are all small streams.

The valleys are rich, and well adapted to cultivation ; but the high lands, hills, and mountains, are sterile, and can only be used for pasturage ; but during the seasons of drouth which always occur in the summer, are worthless for even this. Not over one-fifth of the island can be considered good arable land. Wheat, rye, oats, barley, potatoes, garden vegetables common to the temperate zone, and fruits, consisting of apples, pears, peaches, plums, cherries, currants, raspberries, strawberries, &c., grow in great luxuriance. Wheat, in the interior, is sometimes destroyed by frost. The climate is too cold for the growth of maize.

Sheep are kept in flocks of from 3,000 to 15,000 on some of the large estates in the interior, and wool is the principal article of export to the mother country. Great pains have been taken to import superior breeds of cattle and horses.

The wild animals of the island are not numerous, and as specimens of the kangaroo, badger, opossum, &c., may be found in menageries all over the world, they need not here be described.

The principal birds, are parrots, black and white cockatoos, (which like the parrot, may be learned to pronounce distinctly,) magpie, swan, eagle, emu, &c., &c.

The vegetable kingdom is more important. Thousands of indigenous plants, unknown in other parts of the world, are

here found; and during the greater part of the year, the uncultivated fields and forests present the delightful appearance of a flower garden.

The forests are evergreen. The principle trees are the oak, pine, light-wood, cedar, peppermint, wattle, myrtle, cherry, and different species of gum. These last grow to an incredible size. I measured one seventy feet in circumference, two feet from the ground. At the height of ten feet, nowever, it was only about fourteen feet in diameter, and at fifty, about seven feet. Its height was, I should judge, not far from one-hundred and eighty feet. Gum trees from fifteen to twenty feet in diameter, are common. All the wood of the Island is very hard, and is so heavy when green, as instantly to sink in water.

In concluding this chapter, I would remark that a volume might be written upon the subject of which it treats, by a more able and gifted pen. The limits of this work have prevented me from being as minute as I could have wished.

CHAPTER XXIX.

Concluding remarks upon the British Transportation System. — Condition of the Canadian Prisoners. — Suit against the Colonial Government for False Imprisonment. — Departure from Van Dieman's Land on the British Merchant vessel "Sons of Commerce." — Arrival at Pernambuco. — Kindness of Strangers. — Voyage direct to the United States, on the American Barque "Globe." — Landing at New Castle, in Delaware. — Philadelphia. — New York. — Arrival at Home. — Conclusion.

I FOUND it much more pleasant to reside in Van Dieman's Land as a free man, than a captive: yet have no hesitation in saying, that I would not have made it my home for life, could I have become the possessor of the whole island. The general state of society, the insecurity of property, character and life, the prevalence of every description of crime, and above all, the worse than African slavery of the prison population, render it an *accursed spot*. It is due, however,

to the British Government, to say, that a change for the better took place before I left the country, by which more pains were taken for the reformation of the prisoners, and less hard labor required; but the plan of herding them together insures their progress in a downward course to temporal and eternal death. In taking a final leave of this subject, I deem it my solemn duty to record my unqualified disapprobation, or I might say *horror*, of the British transportation system, as pregnant with the most fearful consequences, in a moral point of view, to the convict. I have refrained from giving many details which I might have done, from feelings of delicacy; indeed, they were of so dark and dreadful a nature, that I could do no more than hint at them. It has given me the greatest joy to find that these evils are beginning to be understood in Great Britain, and I hope and pray, that the foul system will soon be abolished altogether.

My anxiety to return to my native land, was daily becoming more intense after my restoration to liberty, but the want of *funds*, prevented the gratification of my wishes. This obstacle, however, was removed by the kindness of F. W. Clarke, Esq., of Boston, Mass., who being in Van Dieman's Land, on business, and learning my situation, accepted a bill on my father, and furnished me with money to pay my passage to London, and procure a *fit-out*.

A majority of my companions in exile were free, and sanguine hopes were entertained that all would soon be pardoned, but their condition would be but little improved thereby, unless means were provided for their return home. Many despaired of ever being able to leave the Island, and I am sorry to say, an impression prevailed, that their friends and the American public generally, were unmindful of their condition. The conduct of the whole party had been remarkably good during the whole period of their exile; and I am happy to be able to say, that they had gained the confidence and esteem of the best people in the colony, and were regarded as upright, steady, intelligent, and respectable men. It grieves me to add, that a few occasionally drank to excess, probably in the vain hope of thereby drowning their sorrows.

An action against the Colonial Government for false imprisonment, had been pending in the Supreme Court for some months before I left. It was brought by James M. Aitcheson, and Mr. MacDowell kindly volunteered his services in its support; but a disposition was early manifested by the judges to defeat it.* Mr. Hathaway furnished me with a letter of introduction to Mr. Everett, the American Minister in London, where I proposed to institute legal proceedings also, but subsequent events deprived me of Mr. Everett's counsel.†

. On the 25th September, 1845, I bade adieu to my kind friends, and shaking the dust of Van Dieman's Land from off my feet, was soon on board the "Sons of Commerce," Captain Williams', bound for London. "All hands weigh anchor!" was soon shouted from the quarter deck, and the ready "Aye, aye, sir!" and merry song of the jolly tars, as they manned the capstan, convinced me that we had a good crew.

To describe my feelings on leaving Van Dieman's Land, would be impossible. The remembrance of all my dreadful sufferings, the persecutions of my enemies, the kindness of my friends, and the forlorn condition of my less fortunate comrades, came up before me, and I am not ashamed to acknowledge, that I paced the deck for some time, my breast heaving with uncontrollable emotions, and tears gushing from

*A letter which I have just received from Van Dieman's Land, informs me that this suit was *quashed*, on the ground of its having been brought too late.

CONSULATE OF THE UNITED STATES, }
HOBART TOWN, SEPT. 25th, 1845. }

Sir,—Mr. Linus Wilson Miller, one of our unfortunate countrymen who were engaged in the revolt in Canada, in 1838, and who has been a prisoner in this colony for the past six years, being now pardoned, is about to embark for the United States *via* London. He is desirous for an introduction to your Excellency for advice, as it now appears that all the citizens of the United States, who have been sent here prisoners, have been illegally held in bondage, no warrants having accompanied them; and it is the intention of many to institute proceedings against the British Government for damages.

Mr. Miller bears with him testimonials of character from gentlemen of high standing in the United States, and others, and I believe him to be a gentleman of undoubted integrity and the first respectability,

I have the honor to be, sir,

Your obedient servant,

E. HATHAWAY,

THE HON. EDWARD EVERETT, &c., &c., LONDON.

my eyes, in spite of my efforts to restrain them.

It is not my intention to trouble the reader with the details of my voyage home, which are too uninteresting to deserve more than a passing glance. There were about twenty passengers beside myself, from all of whom, though strangers, I received kind and gentlemanly treatment.

Our ship was not a first-rate sailer, but favorable winds made up for the deficiency. Passing to the south of New Zealand, and steering E. S. E., we were not long in finding a few stray icebergs, the company of which Capt. W. did not relish, for he immediately bore away to the north. The winds were generally from the west, and the surface of the great Pacific smooth, when compared with the Atlantic ocean. In forty-two days we rounded Cape Horn, immersed in a thick fog, but favored with a good wind. The weather was cold, and passengers required warm clothing.

The winds were more variable in the Atlantic, and we made less progress. On the 18th of November, in Lat. 36 degrees 56 minutes S., Long. 42 W., for the first time since sailing we were favored with the sight of a neighboring vessel, but as she was several miles astern we soon lost sight of her. On the 8th Dec., in Lat. 22 deg. 37 sec. S., Long. 37 deg. 28m. W., the American ship "Lucas," Capt. Miller, from Boston, bound to China, with passengers on board, passed within a stone's throw of our vessel. In Lat. 16 degrees S., we caught the south-east trades, and on the 20th Dec., dropped anchor at Pernambuco, to obtain water. We had seen no land before since sailing. I went on shore with the other passengers, and found the American barque "Globe," Capt. Esling, about to sail for Philadelphia. Wishing to shorten my route home as much as possible, I waited on Capt. E., and requested him to accept a bill on my father for the amount of the passage. This he declined doing, as contrary to his instructions from the owners of his vessel; but my circumstances becoming known to some American and English gentlemen, residents there, and others, a subscription was without my knowledge started, and in a few minutes the sum of fifty-seven dollars was placed in my hands by these

kind friends. I accepted it with grateful feelings, upon condition that I should draw upon my father for the amount, and the money be returned.

On the 25th December, the *Globe* sailed for Philadelphia. D. R. Bouker, Esq., and Capt. Upton, of Salem, Mass., were my fellow passengers, and in the society of my countrymen, in an American vessel, I began to feel myself once more at home. In crossing the equator, the *southern cross* soon disappeared, while the northern star, which had been hidden from my view so long, gradually arose above the horizon, and I hailed its first appearance as I would have done the face of an old friend. But in passing from the southern to the northern hemisphere, the voyager, if an admirer of the starry heavens, loses greatly by the change. Nothing can exceed the beauty of a starlight night at the south. Each star in brilliancy shines forth like a little sun in the heavens, and the whole firmament appears sparkling with bright and beautiful gems. The Magellan clouds, which resemble in appearance two detached portions of the galaxy, and a neighboring dark space or spot in the sky, in which no stars are visible, are seen at an angle of about 50 degrees in the heavens to the south, and add much to the interest of the scene. Stars of the first and second magnitude are much more numerous than at the north, and their great brilliancy, and intensity of light, are probably owing to the clearness and purity of the atmosphere.

On Sunday the 25th January, 1846, we landed at New-Castle, Delaware, having experienced a very pleasant and agreeable voyage. The reader must imagine with what delight I hailed the first sight of my native land, and the emotions I experienced upon setting my foot upon its shores, for I am incompetent to describe them.

Leaving the vessel in charge of the pilot, we proceeded to Wilmington, and took the rail-road cars for the Quaker city, which we reached about 2 o'clock the next morning. Here we remained until the *Globe* arrived on the evening of the 27th, and I had leisure to remark, that it was the finest city in outward appearance at least, that I had ever seen. The regularity, width, and cleanliness of the streets, the simple elegance of

the buildings, and the sedate, business-like manners of the inhabitants, bespeak for the Quaker City the meed of praise from the stranger who visits it.

On the morning of the 28th, I reached the metropolis of the United States, where I bade farewell to my kind companions, Messrs. Bouker and Upton. The friendly congratulations of strangers were sufficient to convince me, however much like a dream it might appear, that I was indeed out of the land of Nod, and in my own native state.

But there was one dear, loved spot, the quiet town of Stockton, the home of my childhood, the abode of those nearest my heart, which possessed greater attractions to me, than all the splendid cities of the world : and I hastened onward, as fast as steam would carry me, to taste once more its sweetness. "Home ! sweet, sweet home !" how the breast of the wanderer thrills with delight as he nears it after an absence of long years of adversity ! How has time dealt with the loved and worshipped ones ? Do they still live ? Do they look, and feel, and love, as in bye-gone years ? What changes are wrought in the once familiar faces of the happy children, who sported on the village green ? Of youthful companions ; whose hearts at the parting, long ago, were warm with the friendship and trust of growing years ; and with whom the delightful season of youth glided sweetly and swiftly away ? The vacant chair may be found at a father's fireside, awaiting the return of the absent, which no stranger has been allowed to occupy ; but may not new friendships, new ties, long have filled the place once occupied by the wanderer, in the heart of an early friend ? Aged sires, whose heads at the parting were already whitening ; have they disappeared from the homes which their strong arms had made so bright and comfortable ; or do they still linger around their hearth-stones, and will they remember and recognise one on whom they used to smile ? The village churchyard ; how many friends and acquaintances are sleeping there who would have rejoiced at the exile's return ? Such questions as these, together with a thousand tender recollections of the past, arise in the mind of the returning wanderer, and the nearer his approach, the more intense his feelings, until his footstep

is once more heard upon the threshold of a home where it has long been listened for in vain ; where the flame of a parent's, a brother's, a sister's love, has been burning brighter and purer for years ; where countless prayers have been offered for his temporal and eternal welfare, for the richest of heaven's blessings upon his head, for the sound of his footsteps again upon the threshold; and—*hark! there it is!* those prayers are answered! the *prodigal* is returned! Now, ho! for the *fatted calf!*

Indulgent Reader, my task is nearly finished. Thanks to a gracious Providence, I found my nearest relatives, after an absence of eight years, alive and well; and we sometimes gather around a pleasant fireside, and talk over the trials of the past. Whether the cup of adversity, of which I have so deeply drank, has fitted me for a faithful discharge of the duties of life, remains to be seen ; but of this I am certain, I still am blessed with a strong arm and a willing heart to wield a sword in the sacred cause of LIBERTY, either in the defence of my own country, or the rights of an oppressed people.

Kind, generous friends of my native land, whose friendly sympathies have followed me in my wanderings, and cheered the hearts of my aged parents in my absence, with grateful emotions, I bid you ADIEU.

APPENDIX.

NOTE I.—BATTLE OF PRESCOTT.

Early in November, 1838, the movements of the Patriots on our northern frontier indicated that renewed attempts were about being made for again unfurling the standard of Liberty in Upper Canada. The zealous watchfulness of the United States authorities, and the indecision, mismanagement and, possibly, want of energetic courage in some of the leaders of the party, divided, and finally withheld the main body of the invaders; but there were a few choice spirits who, shrinking from no danger, and confidently relying upon the pledged faith of their compatriots, rushed boldly forward to pave the way for others. Their leader, Col. S. Von Schoultz, (a Pole, of noble extraction, who had fought the battles of his own oppressed country, and afterwards sought a refuge on our shores,) was in every respect worthy to act in that capacity.

With orders to storm Fort Wellington and unfurl his banner upon its walls, (a preconcerted signal for the Canadians to join them,) he found himself opposite Prescott on the morning of the 11th, with two schooners, containing about 200 men, arms, ammunition, artillery, provisions, &c., &c.; but unhappily, in an attempt to effect a landing at the wharf, both vessels ran aground, where one remained several hours, while the other got clear, but was only able to make the Canada shore at Windmill Point, a mile below the Fort. Here Von Schoultz landed his men, and took possession of a stone mill, and three out-buildings.

The steamboat "United States," and the small Canadian steam ferry-boat were taken possession of by the Patriots, at Ogdensburgh, and after several attempts, in which they were opposed by the British steamer "Experiment," in which seven of the enemy were killed by musket and rifle shots, succeeded in hauling off the schooner from the shoal in the river, and landing some of her men at the windmill, but in the confusion and mismanagement attendant upon the opposition of the enemy, left with nearly all the munitions of war so much needed by Von Schoultz and his party.

In the evening, Col. Worth, of the United States army, arrived at Ogdensburgh, with a detachment of troops, and a United States Marshal, and took possession of the steamboats, schooners, &c., thus cutting off

further supplies of men, arms, &c., from the Patriots at the Windmill, who busied themselves during the night in strengthening their position, having been repeatedly promised large reinforcements from the American shore since their landing. Alas! they were cruelly deceived.

On the morning of the 12th, an attempt was made by the enemy to dislodge them. Three armed steamboats dropped down the river from Prescott, anchored opposite the mill, and commenced throwing balls and bomb-shells; at the same time the 83d regiment, supported by about 1200 provincial soldiers, made their appearance in the open field in front, the latter forming the right and left wings. The Patriots now marched out and formed in line of battle, entrenching themselves behind stone walls, ditches, &c. The enemy advanced to within about one hundred yards, and opened their fire, which was immediately returned with great spirit and effect. The provincial troops were the first to retreat, leaving the 83d unsupported, and they too, after fighting bravely until literally cut to pieces, retreated. Thus, after a desperate engagement which lasted upwards of three hours, this little handful of Patriots were left in undisputed possession of the field of battle, having fairly beaten more than eight times their number of the enemy. Their loss in killed and wounded was about thirty, while that of the enemy is said to have been nearly three hundred. The annals of history record but few victories achieved against such fearful odds, and probably there never was a braver band of men engaged in deadly combat with British forces. During the engagement, the American shore was thronged by thousands of spectators, who constantly cheered the Patriots, but that was all! No efforts were then or afterwards made to reinforce or bring them away.

On the 14th, a flag of truce was sent by the British, asking permission of the Patriots (who occupied the mill and stone buildings) to bury their dead, which was granted. On the 15th, the enemy were greatly reinforced, and all chance, either of escape or final success, cut off. On the 16th, the Patriots sent out a flag of truce, the bearers of which were fired upon as soon as they made their appearance in the field. A white flag was at the same time displayed from the summit of the mill, but without being regarded. A little before sunset, Col. Dundas sent a flag summoning the party to surrender at his discretion, which was done. Thus ended this unequal and sanguinary contest! The loss of the vanquished party in killed and wounded, was said to have been less than fifty, while that of the victors was nearly six hundred.

Of the captured Patriots, their brave and noble leader, Von Schoultz, Col. Abbey, Col. Woodruff, Daniel George and others, were executed; several of the youngest pardoned, and the remainder sent to Van Dieman's Land.

NOTE II.—BATTLE OF WINDSOR.

On the 4th December, 1838, a party of Patriots crossed over from Detroit and landed on the Canada shore. The same mismanagement prevailed here as elsewhere; only one hundred and sixty-four men, being about one-eighth of their available force, were brought into the field. They were commanded by Gen. Putnam and Col. Harvell, the former a Canadian refugee, the latter a Kentuckian. Making a forced march to Windsor in two divisions, they attacked the military barracks, shouting their watchword, "Remember Prescott;" and crossing guns with the enemy, through the windows, fought with determined courage for about forty minutes, when, the barracks being on fire, the British force surrendered—in number thirty; their killed and wounded being about as many more. Eight of the Patriots were killed and seven wounded; among the former was Capt. Lewis, a Canadian, from the London district, and a brave officer. The latter took small boats and returned to the American shore, where their landing was opposed by Gen. Hugh Brady, of the United States army. [The reader can make his own comments upon this officer's *conduct*.]

After burning the British steamer "Thames," which lay at the wharf, in token that the outrage of the "Caroline" was not forgotten, the Patriots took up their line of march for Sandwich.

On their way they encountered a considerable body of the enemy, whom they attacked and drove into an orchard, where they took position behind a fence. A skirmishing fight continued until the enemy were reinforced by two hundred regulars, from Malden, who cut off the rear guard of the Patriots. This detachment, after discharging their prisoners, seized upon such canoes as they could find, and crossed over to Hog Island, where Major *Payne*, of the United States Army, who had command of the steamboat "Erie," ordered his men to fire upon them! *which was done!*

Meantime, General Putnam was compelled to order a retreat to the woods, in effecting which his party were exposed to a deadly fire, and the retreat at length became a flight. Putnam was shot dead in the act of getting over a fence. His aid likewise fell with the Patriot standard in his hands, which he wrapped around his body, and expired. Col. Harvell died as a warrior should, nobly fighting to the last. He would neither retreat nor accept quarters from an ungenerous enemy. A few of the party escaped to the American shore, some perished in the woods, while the remainder were hunted down by the Indians and British *blood-hounds*. The most disgraceful part of the affair remains to be told. Col. *Prince*, in his official report, says:

"Of the brigands and pirates, twenty-one were killed, besides four who were brought in just at the close and immediately after the engagement; ALL OF WHOM *I ordered to be shot upon the spot, and it was done accordingly.*"

Col. Sheldon and five others were taken by the Indians a day or two afterwards, and were about being murdered in the same way, when Col. Airey, in answer to an appeal made by Mr. Sheldon, exclaimed to Prince, "Good God! will you murder men whom the savages have spared?" These men were saved, but several wounded Patriots were shot or bayoneted in cold blood, while begging for quarter. It was asserted that even the savages who witnessed these proceedings, left the British camp in disgust.

Messrs. Joshua Doan, Daniel Kennedy, Correlius Cunningham, Hiram B. Linn, Bedford, Clark, and Purley, were executed at London, and eighteen others transported to Van Dieman's Land.

NOTE III.

Of the ninety-one Canadian State prisoners transported to Van Dieman's Land, thirty-three remained on the Island in September, 1845. Joseph Stewart, Solomon Reynolds, Elijah C. Woodman, Robert G. Collins, John Berry, Joseph Leforte, Moses A. Dutcher, (married in the colony,) J. S. Gutteredge, Jacob Paddock, John Vernon, John C. Williams and James M. Aitcheson were pardoned, but had no means of paying their passages home. Orlin Blodget, Asa H. Richardson, Hugh Calhoun, John Sprague, Henry Shew, Hiram Loop, Thomas Baker, George B. Cooley, Michael Fraer, Chauncey Mathews, Calvin Mathews, Andrew Moore, William Reynolds, John Bradley, Patrick White, Riley M. Stewart, James Ingles, Horace Cooley, Samuel Washburn, and Norman Mallory, held tickets of leave, but were not pardoned. Jacob Beemer was at a road party. Robert Marsh, J. Cronkhite, Leonard Delano, Luther Darby, Elon Fellows, Nelson Greigs, Jeremiah Greigs, Gideon Goodrich, John Gillman, David House, Daniel D. Heustis, Ira Polly, Orin W. Smith, Elijah Stevens, Samuel Snow, John G. Swansburgh, Alvin B. Sweet, Chauncey Sheldon, Joseph Thompson, John Thomas, Beemis Woodberry, Edward A. Wilson, Nathan W. Whiting, John Grant, James D. Fero, Riley Whitney and Henry Barnham left Hobart Town in January, 1845, for the Sandwich Islands, per American whaling vessel, "Steiglitz."

David Allen, John B. Tyrel, John Morrisette, were pardoned, and left the colony for the United States, in 1844.

Aaron Dresser and Stephen S. Wright were pardoned for capturing bushrangers, in June, 1843, and returned home.

William Gates and Chauncey Bugbee, left for Port Philip, New South Wales, in July, 1845.

George T. Brown left on an American whaler in January, 1845, and arrived home in the spring of 1846.

Emanuel Garrison, Garret Hicks, and Daniel Liscombe, left for Sydney, in the American merchant vessel "Eliza Ann," June, 1845; the two former intending to work their passages home, in that vessel.

Michael Murray left Van Dieman's Land in the United States whaling vessel "Fame," in June, 1845.

Hiram Sharp left in the United States whaling vessel "Belle," for a whaling voyage in the South Seas, August, 1845.

Jehial H. Martin and James Pearce left for Sydney, in a colonial vessel, September, 1845.

Benjamin Wait, Samuel Chandler, and James Gemmell, made their escape from the Island in 1842.

Alexander McLeod, John James McNulty, Garret Van Camp, J. P. Williams, Asa Priest, Andrew Leper, Lysander Curtis, Foster Martin, William Notage, John Simmons, Alson Owen and Thomas Stockton were dead; nearly all these men died in consequence of bad treatment.

TESTIMONIALS.

[The following certificates of the author's conduct while resident in Van Dieman's Land, were kindly furnished him by the gentlemen whose signatures they bear:]

I certify that Mr. Linus Wilson Miller, who was sent to this colony for being concerned in the rebellion in Canada, was sent to this station in consequence of attempting to make his escape from the colony: that shortly afterwards he became an inmate of my family, as tutor to my children, and remained for upwards of two years with me: that I always found him actuated by the most honorable feelings, and that his conduct then, and since, has been such as to merit the most unqualified approbation.

T. J. LEMPRIERE,

Ass't Com. General, and J. P. for the territory of Van Dieman's Land.

PORT ARTHUR, VAN DIEMAN'S LAND, 1st July, 1845.

I have known the bearer, Mr. L. W. Miller, for nearly four years past, and have much pleasure in bearing testimony to his uniformly steady and exemplary conduct during the whole of that period. I have reason to believe that he has given entire satisfaction to all those in whose employ he has been engaged.

J. A. MANTON,

Minister of Melville st. Chapel.

HOBART TOWN, VAN DIEMAN'S LAND, 24th September, 1845.

I do hereby certify that I have known Mr. L. W. Miller, who was unfortunately sent to this colony for being concerned in the American outbreak, for a considerable length of time; and that his character and

conduct obtained for him general estimation, not only from the authorities, but from the inhabitants in general. His return to his native land is accompanied by the general good wishes.

ROB'T LATHROP MURRAY,

late Captain, "Royals;" and proprietor of Murray's Review.

HOBART TOWN, September 22, 1845.

I hereby certify that Mr. L. W. Miller was known to me for about five years; his conduct the whole period was in every respect most unexceptionable and exemplary. He has always acted in a manner to induce me to look upon him as a young man of honorable and upright feelings.

CHARLES O'HARA BOOTH,

VAN DIEMAN'S LAND, 22nd Sept., 1845. Queen's Orphan School.

ERRATA.—The following are the principal errors that escaped correction in the revision of proofs:

Page 316, 21st line, after "substance," read, *with which the water was impregnated.*

" 325, 25th " for *six* read, *nine* feet.

" 365, 19th " for *load*, read *land*.

2790. MILLER, LINUS WILSON, 1818?-1880.

Notes of an exile to Van Dieman's Land: comprising incidents of the Canadian rebellion in 1838, trial of the author in Canada, and subsequent appearance before Her Majesty's Court of Queen's bench, in London, imprisonment in England, and transportation to Van Dieman's Land. Also, an account of the horrible sufferings endured by ninety political prisoners during a residence of six years in that land of British slavery, together with sketches of the island, its history, productions, inhabitants, &c.&c. Slaves can breathe in England. By Linus W. Miller. *Fredonia, N.Y.: Printed by W. McKinstry & co. 1846.*

xi, 378 p. 8vo. p.10 appears as 01.

19.1 x 12.4 cm. p.161-165 cropped.

Sabin, Severance.

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